

City of Salem Zoning Board of Appeals

Meeting Minutes

February 16, 2022

A meeting of the Salem Zoning Board of Appeals (“Salem ZBA”) was held on Wednesday, February 16, 2022 at 6:30 pm via remote participation in accordance with Chapter 20 of the Acts of 2021.

Chair Mike Duffy calls the meeting to order at 6:38 pm.

Chair Duffy 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. Chair Duffy also explains the rules regarding public comment.

ROLL CALL

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

CONTINUATIONS

Location: **20 Wisteria Street (Map 32, Lot 196) (R2 Zoning District)**

Applicant: **Rafael Campusano**

Project: A continuation of a public hearing for all persons interested in the petition of RAFAEL CAMPUSANO for a variance per Section 4.1 of the Salem Zoning Ordinance *Dimensional Requirements* to add a dormer of +/- 37 feet by 12 feet on the rear & left side of the existing building within the existing building footprint at 20 WISTERIA STREET (Map 32, Lot 196) (R2 Zoning District).

Documents and Exhibitions

- Application date-stamped October 6, 2021 and supporting documentation

Chair Duffy introduces the petition.

Mr. Laroe explains that this is no longer a petition for a variance, but rather a special permit as the building is a two-family dwelling, per Section 3.3.5.

Mr. Campusano and Mr. Fortuna introduce themselves. Mr. Fortuna further explains the circumstances, and states the request is for a special permit to add a dormer to the attic of a nonconforming building in order to increase the usable area on the third floor. He indicates an additional egress will be added.

Chair Duffy asks if the dormer on the side goes around the corner to the back as well, and Mr. Fortuna indicates it wraps around slightly for the stairs to be installed, but that it would not be visible from the street. Mr. Fortuna contends they reached out to neighbors, and only one responded with no objection to the proposal. The other neighbors could not be reached. Chair Duffy asks if the proposed additions are all within the current footprint, and Mr. Fortuna confirms that is the case. Mr. Fortuna further states the stairs will be added in the rear, and that the addition

will serve as a master bedroom with a bathroom, walk-in closet, and additional storage or office space.

Mr. Viccica asks if it is an expansion of the unit that sits below on the second floor, and Mr. Fortuna confirms that is the case.

Chair Duffy opens the floor to public comment.

Steven Kapantais of 23 Wisteria Street introduces himself, and states there is a procedural issue at hand. Mr. Kapantais maintains that no notification was sent to neighbors informing them that a special permit was being sought rather than a variance. Mr. Kapantais states that the meeting agenda still lists the request as being under Section 4.1, and that without proper notification neighbors could not be properly prepared. He suggests the Board should consider not voting on the matter.

Mr. Laroe indicates he spoke with Building Inspector Tom St. Pierre and that his suggestion was that the project did not need to be re-advertised. Mr. Laroe apologizes for any confusion.

Chair Duffy recalls that this matter was continued because it was noticed as a variance but was supposed to a request for a special permit.

Mr. Viccica notes that a special permit requires a lower burden to achieve than a variance, which requires a demonstration of hardship. He suggests that Mr. St. Pierre's recommendation may have been based on the belief that because the requested relief is not rising to a higher level that it would be fine to leave as advertised, although he states he disagrees with that conclusion.

Ms. McClain agrees with Mr. Viccica, stating that even if the standard is lower, notice requirements are still important.

After a brief discussion, Mr. Viccica acknowledges that re-advertising costs money and that is likely why the Building Department takes this stance. Chair Duffy notes this is something that has occurred in the past, and suggests there is no prejudice in having to meet a lower standard. Mr. Viccica states if the rest of the Board agrees and is comfortable, he is fine with hearing the petition and ruling on the matter.

Mr. Kapantais states the issue is not just the advertisement, but that the agenda lists the issue under Section 4.1, and that without notification or the application available online, there was no way to be prepared. Chair Duffy asks Mr. Kapantais if he has any substantive comments on the proposal or if his comments are strictly procedural. Mr. Kapantais suggests he cannot comment because he has not had time to review Section 3.3.5 of the zoning ordinance. Mr. Fortuna offers to read Section 3.3.5, which pertains to nonconforming single- and two-family residential structures, and does. Section 3.3.5 states that nonconforming single- and two-family residential structures may be reconstructed, extended, altered, or structurally changed upon a determination by the Building Commissioner that such proposed reconstruction, extension, alteration, or change does not increase the nonconforming nature of said structure. Mr. Fortuna contends that in this case the building is an existing nonconforming structure, and the additions are all within the existing footprint.

Ms. Ordaz acknowledges Mr. Kapantais' frustration, but notes that the project details themselves have not changed, and that the dormer and plans were all part of the original application. She

suggests it would be unfair to punish the applicant based on an internal error, particularly when the relief sought is less, not more. Ms. Ordaz states she is also prepared to continue hearing the matter.

Mr. Kapantais states his concerns are not about the specifics of the project, but rather procedure and open meeting law requirements.

Mr. Viccica states his understanding is that there was a discussion regarding a request for a special condition. Steve Cummings introduces himself and explains that the project was originally proposed with a kitchen, and that the special condition would be to make sure the addition is strictly an expansion of the second unit, rather than a new third unit. Chair Duffy confirms the special condition.

Mr. Kapantais interrupts the discussion to express concern that the matter was discussed outside the meeting. Mr. Kapantais asks how many members were present for such discussion. Mr. Viccica asks Mr. Kapantais if there is a specific issue he would like to address with the Board, and states that if he is looking for the ability to appeal a project he may. Mr. Kapantais again expresses concern that a special condition was discussed outside the public meeting. The Board and Mr. Kapantais continue to dispute the matter, and the Board votes to end the public comment portion at 7:07PM. All Board members vote in favor, and the public comment is closed.

Chair Duffy discusses the special permit requirements and how they relate to the proposal.

Motion and Vote: Mr. Viccica motions to approve the petition of RAFAEL CAMPUSANO for a special permit per Section 3.3.5 of the Salem Zoning Ordinance *Dimensional Requirements* to add a dormer of +/- 37 feet by 12 feet on the rear & left side of the existing building at 20 WISTERIA STREET (Map 32, Lot 196) (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 extend 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.

And the following special condition:

1. The third floor will not be used as a separate and additional residential unit, but shall be part of the second unit in the building.

Ms. Ordaz seconds the motion. **The vote is five (5) in favor (Carly McClain, Rosa Ordaz, Mike Duffy (Chair), Paul Viccica, 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 June 10, 2021 and supporting documentation

Chair Duffy introduces the petition, and notes a letter was submitted seeking to continue to the next regularly scheduled meeting of the ZBA on March 16, 2022.

Attorney John Keilty introduces himself on behalf of applicant, and discusses the circumstances related to the continuance sought. Mr. Keilty indicates they are working on additional details regarding a forthcoming building permit, and that they are hopeful once it is received the appeal can be dropped.

Motion and Vote: Mr. Viccica motions 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) until the next regularly scheduled meeting on March 16, 2022:

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

REGULAR AGENDA

Location: 112 Broadway (Map 32, Lot 72) (I Zoning District)
Applicant: Edward P. and Doris Harrington
Project: A public hearing for all persons interested in the petition of EDWARD P. and DORIS HARRINGTON at 112 BROADWAY (Map 32, Lot 72) (I Zoning District) for a special permit per Section 3.3.2 *Nonconforming Uses* of the Salem Zoning Ordinance to change from one nonconforming use (one-family dwelling) to another nonconforming use (four-family dwelling). The petitioner also seeks a variance per Section 4.1 *Dimensional Requirements* to keep the existing non-conforming 6' front yard where 30' feet is required. The side yard will continue to be non-conforming at 44' where 30' is required and the rear yard will be 13' of setback where 30' is required.

Documents and Exhibitions

- Application date-stamped December 22, 2021 and supporting documentation

Chair Duffy introduces the petition.

Attorney Bill Quinn introduces himself on behalf of the applicants, and notes that architect Dan Ricciarelli is also present. Mr. Quinn discusses the property location, noting it is past the Salem State athletic facility, and one of the last buildings on the right before the fire station on Broadway, next to a barber shop. Mr. Quinn remarks that the neighborhood is zoned in an interesting way, with this side of Broadway being zoned industrial, while the other side is an R2 zone. Directly behind the property is a large parking lot for Salem State, which includes a storm water basin that comes up to the property line. Mr. Quinn explains the property is on Broadway, and also on a paper street known as Daisy Street, which is an unconstructed street of record. After discussions with the Building Department, Mr. Quinn indicates the position is that it should be treated as having frontage on both streets. Mr. Quinn states it does not make much of a difference anyway, as this is an industrial zone, where residential is not allowed anyway and all setback requirements are 30 feet. He adds that there is no zoning requirement for lot area per dwelling unit here. In this zone some dimensional requirements are different, and while there is a 45 foot height limitation, there is no limit on stories. Mr. Quinn indicates the property is a single family house that has been occupied for many years, and that his clients are interested in buying the property and redeveloping it for total residential use. The proposal would transform the existing single-family dwelling to a four-unit residential dwelling with adequate parking for all units. Mr. Quinn discusses the layout and site plans, including the addition of 25 square feet at the back of the property. Mr. Quinn explains the existing home will be subdivided and a dormer will be added to the third floor to create three units in front and one in back, with four surface parking spaces and two underground garage spaces. Mr. Quinn contends this is a good opportunity to bring some fresh, new, legal, and healthy residential units to the City, which needs them. Mr. Quinn demonstrates that the 30 foot setback requirements render only a tiny area that could be actually buildable on the property. Currently there is a legal but nonconforming use, and he further explains that the setback requirements make it difficult for any development of the property.

Mr. Quinn suggests the project is consistent with the neighborhood character, and that the proposal would not loom over the existing houses. He explains the neighborhood more, noting a barbershop, multifamily four-unit building nearby, fire station, and a nearby three-family dwelling. Mr. Quinn states it is a varied neighborhood with some commercial, industrial, and mixed residential. Mr. Quinn contends granting a special permit from one nonconforming use to another to create a four-unit dwelling would not be more detrimental. He adds that the design is attractive, and that the adequate parking and opportunity for new housing are major benefits. Regarding hardship, Mr. Quinn notes the lot is a small rectangle with two instances of frontage, with a catch basin on the property line, located on a developed and paper street. He argues that the shape and applicable zoning make the property not buildable for any legal use, and as such a variance is supported. Mr. Quinn adds that the topography of the property should also be considered, as it slopes to the rear. Relief will need to be sought from the Conservation Commission subsequent to any relief granted by the Board. Mr. Quinn stresses that the only relief being sought is a dimensional variance, and as such there is a lower legal standard because it does not directly affect the use of the property.

Mr. Ricciarelli presents photographs of the existing property, and explains the existing conditions as being two full stories of living and an attic space, with a full porch in front. The proposal would remove all siding, reconstruct the porch, and add dormers to build out the square footage in the attic space. He states the new footprint will be smaller than the existing deck. Mr. Ricciarelli presents elevations and demonstrates the rear addition, as well as floor plans. There will be here units in front, and a two-story townhome in back with garage parking at grade. Mr. Ricciarelli discusses the four exterior parking spaces and details regarding windows and new siding. The building will be fully sprinklered according to Mr. Ricciarelli. The final units will consists of three two-bedroom units each with a single bathroom, and a two-bedroom two-bath townhouse.

Chair Duffy opens the floor to public comment.

Joseph Gagnon of 105/107 Broadway Street introduces himself and notes he owns the multifamily across the street. Mr. Gagnon expresses support for the petition.

Chair Duffy discusses the variance for dimensional relief and the proposal before the Board, noting the area is of mixed use and that the existing building is already odd for the lot and zone. He adds that a single-family or multi-family use is much less intense that what would be allowed in an industrial zone. Chair Duffy discusses the merits of the plans and proposal, including the addition of housing units to Salem. He summarizes the criteria for relief.

Motion and Vote: Ms. McClain motions to approve the petition of EDWARD P. and DORIS HARRINGTON at 112 BROADWAY (Map 32, Lot 72) (I Zoning District) for a special permit per Section 3.3.2 *Nonconforming Uses* of the Salem Zoning Ordinance to change from one nonconforming use (one-family dwelling) to another nonconforming use (four-family dwelling) and a variance per Section 4.1 *Dimensional Requirements* to keep the existing non-conforming 6' front yard where 30' feet is required, 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 extend 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

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

Location: 293 Jefferson Avenue (Map 23, Lot 129) (B1 Zoning District)
Applicant: Duane and Jinji Sandler
Project: A public hearing for all persons interested in the petition of DUANE R. SANDLER AND JINJI L. SANDLER at 293 JEFFERSON AVENUE (Map 23, Lot 129)(B1 Zoning District), for a variance per Section 4.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance for minimal lot area per dwelling unit of 1,164 SF where 3,500 SF required and to maintain 5.1 side yard width with addition, where 10' is required.

Documents and Exhibitions

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

Chair Duffy introduces the petition.

Attorney Bill Quinn introduces himself on behalf of the petitioners. Mr. Quinn describes the property as a small vacant commercial building with a checkered history and many attempts to use it for a variety of purposes, all of which failed. The building abuts Saint Anne's Church and a steep overpass, and the lot has dramatic topography with a much lower grade in rear bordering railroad tracks. Mr. Quinn presents site plans and notes the existing six parking spaces. He explains the proposal is to create four residential units, and that the relief being sought is a variance from lot area per dwelling unit, as well as a variance to reduce the side setback. Mr. Quinn argues the hardship relates to soil, lot shape, and topography, noting that the parcel is oddly shaped and impacted by the effects of the railroad and construction of the overpass. The lot itself is triangular in shape with a building at the top most portion.

Mr. Viccica asks for clarification on the total number of units and Mr. Quinn states there will be four units with six or seven parking spaces.

Mr. Ricciarelli provides additional details regarding existing conditions, and the proposed additions. There will be two accessible entries, and a total of four units comprised of one- and three-bedroom units. Mr. Ricciarelli discusses the proposed exterior details, including clapboard cladding similar to other homes in the neighborhood.

Chair Duffy opens the floor to public comment.

Judith Ware of Wilson Street introduces herself as a parishioner of Saint Anne's. Ms. Ware notes she has seen many trucks at the property recently, and questions if access to the railroad will be an issue, and if there is any public access. Mr. Ricciarelli states he is not aware of any public access, and Mr. Quinn confirms there is no easement across the property and that there should not be regular

activity on site. Ms. Ware states she had concerns about parking, but that it seems to be addressed with the proposal for six or seven spaces

Mike Becker introduces himself as one of the developers, along with Dave Potter. Mr. Becker explains there is a continuous chain link fence along the railroad tracks. Mr. Becker indicates there will be substantial improvements to the property, and that the units will be rentals. Mr. Becker also explains that they will be required to hold the property for five years to realize tax incentives, and that as much of the existing building will be preserved as possible. The building will be conforming with respect to height and setbacks, even with the proposed additions. Mr. Becker also notes that if the South Salem train station gets developed the property will be close to transit. He indicates the market needs three-bedroom rentals, particularly accessible ones, and that this proposal meets that need as there are a lack of available handicap accessible rental units. Mr. Becker argues that a restaurant or other commercial use would not be the best use for the property. He states that Councilor Morsillo had not heard any objections when they reached out, nor did Councilor Cohen. Mr. Becker discusses the topography and layout of the property in more detail, as well as the layout of the six parking spaces, noting that three spaces will be realigned and made possible by removing the existing vestibule.

Mr. Viccica questions the ability to fit in a seventh legal space, noting that six spaces would be sufficient. Mr. Becker discusses the plans more and how the seventh parking space will fit in. Mr. Viccica states regardless, there are at least six spaces, and suggests that plot plans be as precise as possible, particularly when there are topographic implications. Mr. Viccica and Mr. Becker discuss the parking area using Google Street View.

Dave Potter introduces himself and speaks to the handicap accessible units, noting he has spoken with agencies who have had trouble finding homes for individuals with family members that have accessibility issues. Mr. Potter indicates there are 60 people on a waiting list currently for handicap accessible units, and that this proposal will help.

Chair Duffy notes there is a letter from the current property owner that speaks to the history of the property use. There was also comment submitted by Matthew Berman of 15 Parallel Street in support of the project.

Mr. Viccica comments on the required space around parking spots for accessibility, and suggests it may be challenging to fit in the seven parking spaces. He also notes that if six spaces are not possible, then that would be a modification that would require the petitioner to come before the Board again. Mr. Viccica suggests a minimum of six legal spaces be a special condition.

Motion and Vote: Ms. Ordaz motions to approve the petition of DUANE R. SANDLER AND JINJI L. SANDLER at 293 JEFFERSON AVENUE (Map 23, Lot 129)(B1 Zoning District), for a variance per Section 4.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance for minimal lot area per dwelling unit of 1,164 SF where 3,500 SF required and to maintain 5.1 side yard width with addition, where 10' is required, 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. 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

And the following special condition:

1. The property must maintain six (6) parking spaces.

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

Location: **73 Flint Street (Map 26, Lot 3) (R2 Zoning District)**

Applicant: **Skomurski Development, LLC**

Project: A public hearing for all persons interested in the petition of SKOMURSKI DEVELOPMENT, LLC, at 73 FLINT STREET (Map 26, Lot 3) (R2 Zoning District) for a special permit per Section 3.3.3 *Nonconforming Structures* and 3.3.5 *Nonconforming Single-and Two-Family Residential Structures* of the Salem Zoning Ordinance to add a dormer to the front and rear of the building to improve habitability of the existing living space.

Documents and Exhibitions

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

Chair Duffy introduces the petition.

Attorney Scott Grover introduces himself on behalf of the petitioner, and notes he is accompanied by petitioner Joe Skomurski, as well as Sanir Lutfija of Seger Architects. Mr. Grover explains the property, and notes that when Mr. Skomurski purchased it several months ago it was in a state of disrepair. Mr. Grover indicates his client is in the process of completing a full interior and exterior renovation of the building, and that as part of it he would like to improve the quality of the existing third floor living space with the addition of front and back dormers. The property is an existing two-family and will remain a two-family. Mr. Grover states the existing building is nonconforming in many respects, and discusses the criteria for approving a special permit. Mr. Grover contends that community needs are served by renovating and improving existing housing stock, that there will be no increase in density or impact on traffic, parking, or utilities. Mr. Grover suggests the neighborhood character will be improved, and that views and natural environment will not be negatively impacted.

Sanir Lutfija of Seger Architects introduces himself and discusses the proposed changes in more detail. Mr. Lutfija explains that the dormers will not extend to the full length of the building in

order to limit the massing, and he presents images of both existing and proposed conditions. He adds that the windows on the west elevation will be offset from the neighbors to preserve privacy.

Mr. Viccica asks to see floor plans of the attic level and what the two dormers will be used for. Mr. Lutfija explains it will be two bedrooms and an additional bathroom for the second floor unit. He adds that the building is not very wide, and that is why dormers are proposed on both sides of the roof ridge. Mr. Viccica suggests the building is lovely in front, but that the additions to the right hand side seem peculiar. Mr. Viccica acknowledges this is the Zoning Board and not the Historic Commission, but notes that as an architect, he finds the proposed shed dormer design a bit egregious in the way it is mounted on the building. He clarifies that he is not saying he is not in favor, but that he does not personally find the proposal to be an aesthetic solution. Mr. Lutfija explains that various options were considered, but unfortunately they were limited to shed dormers because the ridge height was so low, but he acknowledges Mr. Viccica's remarks.

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

Chair Duffy notes for the record, that a public letter was submitted by Carol Carr of 7 River Street, which identified some of the same aesthetic issues raised by Mr. Viccica, and suggests the building is important because of its location and visibility. Ms. Carr's letter urges the developer to access the talents of the Historic Commission for guidance.

Chair Duffy discusses the special permit criteria and grounds previously summarized by Mr. Grover.

Motion and Vote: Ms. Ordaz motions to approve the petition of SKOMURSKI DEVELOPMENT, LLC, at 73 FLINT STREET (Map 26, Lot 3) (R2 Zoning District) for a special permit per Section 3.3.3 *Nonconforming Structures* and 3.3.5 *Nonconforming Single-and Two-Family Residential Structures* of the Salem Zoning Ordinance to add a dormer to the front and rear of the building to improve habitability of the existing living space, 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. 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 five (5) in favor (Paul Viccica, Mike Duffy (Chair), Rosa Ordaz, Carly McClain, and Steven Smalley) and none (0) opposed. The motion passes.**

Location: 7 Surrey Road (Map 22, Lot 20) (R1 Zoning District)
Applicant: Daniel Charest
Project: A public hearing for all persons interested in the petition DANIEL AND LISA CHAREST at 7 SURREY ROAD (Map 22, Lot 20) (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 construct a (25'-2" x 22'-1") addition above the garage and a (12'-9" x 11'-6") addition on the first floor.

Documents and Exhibitions

- Application date-stamped January 27, 2022 and supporting documentation

Chair Duffy introduces the petition.

Jake Springer of Jones Architects introduces himself on behalf of Mr. Charest. Mr. Springer explains the proposal is for a second floor addition to an existing home, with an existing 9.7 foot setback, which is nonconforming as the requirement is 10 feet. Mr. Springer indicates the addition would be above the existing garage and entryway, and connect to the second floor. There is no extension of the footprint as the addition will be above the existing garage, and the 9.7 foot setback will not be further encroached upon. Mr. Springer contends the addition will house a master suite bedroom with bathroom and closet. He presents plans associated with existing and proposed conditions.

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

Chair Duffy confirms that all work will be within the existing footprint, and discusses the special permit criteria.

Motion and Vote: Mr. Viccica motions to approve the petition of DANIEL AND LISA CHAREST at 7 SURREY ROAD (Map 22, Lot 20) (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 construct a (25'-2" x 22'-1") addition above the garage and a (12'-9" x 11'-6") addition on the first floor 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. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.
7. 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 extend 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.

8. 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 (Carly McClain, Steven Smalley, Rosa Ordaz, Paul Viccica, and Mike Duffy (Chair)) and none (0) opposed. The motion passes.**

Location: **393 Essex Street (Map 25, Lot 28) (B2 Zoning District)**

Applicant: **Old Fezziwig, LLC**

Project: A public hearing for all persons interested in the petition of OLD FEZZIWIG, LLC at 393 ESSEX STREET (Map 25, Lot 200) (R2 Zoning District) for a special permit per Section 3.3.2 *Nonconforming Uses* to change from one non-conforming use (Dental Office) to another non-conforming use (Multi-Family Dwelling). The relief if granted will allow for the construction of five (5) residential units. The proposal is for one (1) unit on the first floor and two (2) units on the second floor and two (2) units on the third floor.

Documents and Exhibitions

- Application date-stamped January 25, 2022 and supporting documentation

Chair Duffy introduces the petition.

Attorney Joe Correnti introduces himself on behalf of the applicants, who are longstanding members of the community. The proposal is to go from one nonconforming use to another, and Mr. Correnti explains the existing condition as a vacant commercial dental office on the first floor, and three residential units above. The mixed residential and commercial use dates back to the 1950's according to Mr. Correnti. He adds that the building is historically relevant, and that the plan is to restore it to historical standards subsequent to discussions with the Historic Commission. Mr. Correnti contends there are no exterior changes proposed aside from aesthetic improvements. He explains there are two residential units on the second floor, and one unit on the third floor. Mr. Correnti indicates the proposal would eliminate the commercial unit on the first floor, and result in a total of five units. The building is surrounded by multifamily buildings as well as single-family and two-family dwellings. He states there are no proposed changes to the footprint of the building. Mr. Correnti also indicates there is adequate parking with nine spaces identified in the plot plan. Some of the pavement in the rear will be eliminated as part of the proposal, and grass and loam will be put in for the residents.

Mr. Ricciarelli presents the elevations and discusses the property history, noting the home was built in 1740. He discusses building details and states that mantles and details attributable to McEntire will remain. Mr. Ricciarelli states he is looking forward to restoring the building to its natural beauty. He explains the layout, noting stairway modifications in the rear, and splitting the third floor unit into two separate units. The building will be fully sprinklered.

Chair Duffy indicates a letter was submitted by Historic Salem Inc. speaking to some of the historical significance of the building and encouraging preservation of historic details in the interior and exterior.

Chair Duffy opens the floor to public comment.

Louis Sirianni of 6 Botts Court Salem introduces himself and discusses the concept of “by right”, and suggests that by-right this building can have four units, but not five. Mr. Sirianni asks that the Board not allow the relief, and states the third floor is more appropriate as a single unit rather than two due to the sloping walls and small square footage. Mr. Sirianni states that the Board is under no obligation to grant a variance just because a petitioner asks for one.

Chair Duffy explains that the building is already nonconforming in use for the district, and that it would be transforming from one non-conforming use to another (a five-unit multifamily). He states that the Board is charged with determining whether the proposed non-conforming use is not substantially more detrimental than the existing use, with specific criteria for evaluation. Chair Duffy indicates a statement of grounds was submitted with the petition, and speaks to the historical nature and aspects of the property.

Lois Ferraresso of 315 Essex Street asks for clarification regarding where the additional units will be and the configurations. She also asks if the renovations can be done without infringing upon the historic structure and moldings. Mr. Ricciarelli explains the layout again, and confirms that the historic elements will be maintained. Ms. Ferraresso questions the need for the additional unit on the third floor, and suggests it is a far reach for a lovely historic building. Chair Duffy states that if the historic aspect of the property are of concern, Ms. Ferraresso should address those concerns to the Historic Commission.

Motion and Vote: Mr. Viccica motions to approve the petition of OLD FEZZIWIG, LLC at 393 ESSEX STREET (Map 25, Lot 200) (R2 Zoning District) for a special permit per Section 3.3.2 *Nonconforming Uses* to change from one non-conforming use (Dental Office) to another non-conforming use (Multi-Family Dwelling), and construct five (5) residential units, 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 extend 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.

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

MEETING MINUTES

January 19, 2022

Chair Duffy states he has no proposed changes or edits. Ms. Ordaz suggests one edit to the third paragraph, removing a reference to acting Chair Copelas.

Motion and Vote: Ms. Ordaz motions to approve the January 19, 2022 Zoning Board of Appeal meeting minutes 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: Ms. Ordaz motions to adjourn the meeting. Mr. Viccica seconds the motion. **The vote is all in favor. The motion passes.**

The meeting ends at 9:19 PM on February 16, 2022.

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-2022>

Respectfully submitted,
Daniel Laroce, Staff Planner