

City of Salem Zoning Board of Appeals
Meeting Minutes
March 16, 2022

A meeting of the Salem Zoning Board of Appeals (“Salem ZBA”) was held on Wednesday, March 16, 2022 at 6:30 pm via remote participation in accordance with Chapter 20 of the Acts of 2021, as amended by Chapter 21 of the Acts of 2022.

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, Peter Copelas, and Paul Viccica. Also in attendance were Daniel Laroe – Staff Planner, and Jonathan Pinto – Recording Clerk. Those absent were: None

CONTINUATIONS

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 8th 2021 and supporting documentation

Chair Duffy introduces the petition. He explains a letter was submitted by Attorney John Keilty indicating he is out of state and unable to attend this meeting. The letter indicates the project is moving along, and there is an expectation that the parties will be meeting to move closer to a conclusion. Mr. Keilty’s letter requests an extension to the April ZBA meeting.

Ms. Ordaz asks if there is a limit to the number of extensions/continuations that can be granted, as this applicant has been seeking them, and the Board has been granting them, for several months now.

Chair Duffy states there is no regulation or rule that caps the number of requests, and that while he is not sure the exact details of why this matter is taking so long, he knows that the parties are trying to resolve the matter rather than having to have the Board act.

Ms. Ordaz indicates she understands that Mr. Keilty is out of town, but asks that if they are still not ready next month that they withdraw without prejudice.

Mr. Copelas states he also finds it frustrating, and asks if Mr. St. Pierre is present to provide comment but he is not.

Mr. Viccica agrees, and suggests that when the issue gets advertised and continued repeatedly, members of the public who may want to speak may get frustrated and give up their ability to be present and comment. Mr. Viccica indicates that if a continuation is requested once again next month, he will likely vote against it because it is not in the City's best interest to continue it over and over.

Motion and Vote: Mr. Copelas 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 April 27, 2022:

Ms. Ordaz seconds the motion. **The vote is six (6) in favor (Mike Duffy (Chair), Steven Smalley, Rosa Ordaz, Paul Viccica, Peter Copelas, and Carly McClain) and none (0) opposed. The motion passes.**

Location:	143 Derby Street (Map 41, Lot 319) (B1 Zoning District)
Applicant:	Lisa and John Bartlett
Project:	A continuation of a public hearing for all persons interested in the petition of LISA AND JOHN BARTLETT at 143 DERBY STREET (Map 41, Lot 319) (B1 Zoning District), for a variance per Section 4.1 <i>Dimensional Requirements</i> of the Salem Zoning Ordinance for side yard setback, front yard setback, and minimum lot area per dwelling a 143-145 Derby Street to construct a new 90' x 42' +/- mixed-use building to include two commercial units and five residential units. The front and side yard setbacks would be reduced to 0 feet. The B1 requirements are 3,500 square feet per dwelling. The proposal is 1,600 square feet to allow for the five units.).

Documents and Exhibitions

- Application date-stamped October 1, 2021 and supporting documentation

Chair Duffy introduces the petition.

Lisa Bartlett introduces herself as the property owner, and requests to withdraw her petition without prejudice. She states they have not been able to come up with a concrete plan and do not want to take any more of the Board's time until they are prepared to move forward.

Motion and Vote: Mr. Copelas motions to approve the request to withdraw without prejudice the petition of LISA AND JOHN BARTLETT at 143 DERBY STREET (Map 41, Lot 319) (B1 Zoning District), for a variance per Section 4.1 *Dimensional Requirements* of the Salem Zoning Ordinance for side yard setback, front yard setback, and minimum lot area per dwelling a 143-145 Derby Street to construct a new 90' x 42' +/- mixed-use building to include two commercial units and five residential units.

Mr. Viccica seconds the motion. **The vote six (6) in favor (Peter Copelas, Carly McClain, Rosa Ordaz, Mike Duffy (Chair), Paul Viccica, and Steven Smalley) and none (0) opposed. The motion passes.**

REGULAR AGENDA

Subject: **Open Meeting Law Complaint**

Complainant: **Steve Kapantais**

Description: An Open Meeting Law Violation was submitted to the Zoning Board of Appeals alleging that the proper procedures for a public meeting were not followed with respect to the public hearing on February 16, 2022 for 20 Wisteria Street. Specifically, Mr. Kapantais has asserted that a conversation between one Board member and two City employees prior to the start of the meeting concerning a condition recommended by the Building Department for the project potentially violated the Open Meeting Law. Mr. Kapantais also asserted that the Open Meeting Law had been violated in that the agenda for the public hearing referred to a request for a variance even though the relief requested at the meeting was for a special permit.

Documents and Exhibitions

- Complaint date-stamped February 16, 2022 and supporting documentation

Chair Duffy introduces the complaint, stating the Board will take the matter up for discussion and motion on any actions to undertake in response to complaint. Mr. Duffy explains that on February 16, 2022, as Board members were signing in a member of the Building Department, Mr. Cummings, and Dan Laroe were already on the Zoom platform as it was reserved for Board use beginning at 6PM. Zoom had been opened in practice mode and Mr. Cummings, who was filling in for the Building Inspector, Mr. St. Pierre, indicated to Mr. Laroe that he wanted to express concerns regarding the petition at 20 Wisteria Street, and suggested that a special condition stating the third floor would not become a third apartment might be prudent. Mr. Duffy further explains that while this comment was being made, a Board member (Mr. Viccica) logged on and heard mention of the potential condition. While the public meeting was open, Mr. Viccica enquired about the potential condition and it was revisited. During public comment, Mr. Kapantais responded to Mr. Viccica's recalling Mr. Cummings' comments, and raised it as a potential open meeting law violation. Mr. Kapantais subsequently filed a complaint. Pursuant to consultation, the recommendation is to consider voting that in future practice when the Zoom platform is used, to not enable the practice feature when opening the meeting, and that Board and staff members will be provided with an Open Meeting Law guide for future reference. Regarding the notice, Chair Duffy states that the regulations provide that notices shall contain the date, time, and place for such meeting, as well as a listing of the topics reasonably expected to be discussed, under the statute 30A Section 20B. Chair Duffy continues, noting that the list of topics must have sufficient specificity to advise the public of the issues to be discussed. He adds that when a complaint like is this raised about the sufficiency of notice, unless it is clearly insufficient on its face it does not represent a violation on its own. Chair Duffy indicates what was discussed was reviewed to determine if the notice was sufficient. In this instance the agenda noted the applicant, address, and proposed work to be done, which was the addition of a dormer. At the time of the application it was believed to be a variance request, but it was later determined it was a special permit, which has less stringent requirements. The matter was discussed by the Board, and ultimately voted on. The conclusion, according to Chair Duffy, was that there was no concern about the notice given. A recommendation made to the Board is to vote to direct staff to consult with the Building Commissioner on agenda items and to further delegate to the City Solicitor a response on behalf of the Board for the open meeting law violation complaint.

Chair Duffy asks if there is a Board member willing to make a motion to direct staff to confer and consult with the Building Commissioner prior to posting the agenda regarding agenda items, and to delegate the City Solicitor to respond to the complaint.

Motion and Vote: Mr. Copelas motions to approve the recommendations to direct staff to confer and consult with the Building Commissioner prior to posting the agenda regarding agenda items, and to delegate the City Solicitor to respond to the Open Meeting Law Violation submitted by Mr. Kapantais regarding the February 16, 2022 meeting of the Zoning Board of Appeals.

Ms. Ordaz seconds the motion. **The vote is six (6) in favor (Mike Duffy (Chair), Rosa Ordaz, Carly McClain, Paul Viccica, Peter Copelas, and Steven Smalley) and none (0) opposed. The motion passes.**

Location:	46 Butler Street (Map 16, Lot 116) (R2 Zoning District)
Applicant:	Gustavo A. Gomez-Gomez
Project:	A public hearing for all persons interested in the petition of GUSTAVO A. GOMEZ-GOMEZ at 46 BUTLER STREET (Map 16, Lot 116) (R2 Zoning District) for a variance from <i>4.1 Dimensional Requirements</i> of the Salem Zoning Ordinance to make the lot at 46 Butler Street less conforming by “selling” a 3’x 90’ which is 270 sq. ft. section the driveway to the adjacent neighbor at 44 Butler Street. In a R2 zone 15,000 sq. feet is required and the lot will decrease non-conformity in size from 9,165 sq. ft to 8,895 sq. ft.

Documents and Exhibitions

- Application date-stamped January 18, 2022 and supporting documentation

Chair Duffy introduces the petition.

Gustavo Gomez-Gomez introduces himself as the owner of the property at 46 Butler Street, and explains that earlier last year his neighbor at 44 Butler Street remodeled their home pursuant to purchasing it. The owner of 44 Butler requested a special permit to turn the property into a two-family home, but Mr. Gomez-Gomez explains that the driveway the neighbor need to construct required an easement. At the time, Mr. Gomez-Gomez explains he was unaware of the implications and in an attempt to be a good neighbor and assist in expediting the remodel he granted an easement in a hurry. After some research, he came to the conclusion that it may not have been a great idea, and indicates he began to have concerns regarding future attempts to sell the property, and having the properties essentially tied to one another. In an attempt to find a solution, and realizing he had more than enough property for both homes to share the driveway and both owners to own their respective parts, Mr. Gomez-Gomez determined the best action would be to sell the neighbor at 44 Butler part of the driveway so that they each have their own legal driveway. He further explains that he is seeking a variance from the Board because the lot is nonconforming.

Mr. Copelas refers to the diagram of the property and asks why the new dividing line does not simply continue all the way to the back in a straight line. Mr. Gomez-Gomez states he is not opposed to having the line go all the way back if aesthetics are a concern, but that the initial thought was just the additional space to make the driveway legal. Mr. Copelas asks if the easement is similar

to the drawing provided, and Mr. Gomez-Gomez confirms and states that he is just seeking to sell the portion of property currently under the easement

Mr. Viccica asks to see the dimensions of the two driveways.

Mr. Copelas acknowledges that there is some common sense to the request, but also states that a variance is being requested and that he is not sure a clear case for a hardship has been made. He contends that an inconvenience is not a hardship. Mr. Copelas suggests that even if a request makes sense, it does not necessarily mean it qualifies for a variance.

Mr. Gomez-Gomez indicates there will be no changes to the existing driveways, and that the issue is that when the homes were created, the placement resulted in no legal driveway for either home. He explains that since he had the extra space it made sense to propose selling that portion to his neighbor so they could both have legal driveways. He notes that when the easement was first granted, he was excited that the neighboring property was getting redone to improve the neighborhood, but after more research realized the easement could be an inconvenience. Mr. Gomez-Gomez suggests the proposal would benefit both properties.

Mr. Viccica asks Mr. Copelas why he would not consider this a unique characteristic of the land/property, as the lots were created such that they did not have sufficient driveways.

Mr. Copelas contends there is nothing unique about the lots, and suggests they are typical for Salem and regular in shape. He states he is very torn on the matter, and would be open to hearing other Board members flesh out their thoughts more. Mr. Copelas also notes that in the materials provided, there also appeared to be a statement of grounds, which is generally required for special permit requests. He asks if there is a special permit being requested as well, or just the variance. Mr. Gomez-Gomez explains he is just seeking a variance, but that he was confused when filling out his request so he submitted both.

Chair Duffy acknowledges that typically a variance requires a high bar is met, but states that here a minor dimensional relief is being sought, so to the extent that a sliding scale on how significant the evidence needs to be could exist, a minor dimensional variance would certainly be at lowest point. While the lots themselves are fairly typical Salem lots, Mr. Duffy notes that this is an R2 zone and that the property at 44 Butler is already non-conforming for side yard setback, and both properties are non-conforming for front yard setbacks and minimum lot area.

Mr. Copelas states Chair Duffy's point regarding minor dimensional relief is well taken, and acknowledges that these type of variance requests are not often very significant. Mr. Gomez-Gomez suggests it is a small adjustment that benefits both properties and allows them to have legal driveways.

Chair Duffy opens the floor to public comment.

Regina (no last name given) of 44 Butler Street introduces herself, and states that she and her husband are both in agreement and supportive of the request. She indicates it would be good if this issue could be resolved for both property owners.

Chair Duffy discusses how both parties appear to be in favor of the request, and again notes that both properties are nonconforming lots in an R2 zone, and that the relief sought represents a minimal change. Mr. Copelas and the owners of 44 Butler briefly discuss the history of the easement and property renovations.

Motion and Vote: Mr. Viccica motions to approve the petition of GUSTAVO A. GOMEZ-GOMEZ at 46 BUTLER STREET (Map 16, Lot 116) (R2 Zoning District) for a variance from *4.1 Dimensional Requirements* of the Salem Zoning Ordinance to make the lot at 46 Butler Street less conforming by “selling” a 3’x 90’ which is 270 sq. ft. section the driveway to the adjacent neighbor at 44 Butler Street, decreasing lot non-conformity in size from 9,165 sq. ft. to 8,895 sq. ft., 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 is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.
5. 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 six (6) in favor (Carly McClain, Rosa Ordaz, Steven Smalley, Mike Duffy (Chair), Paul Viccica, and Peter Copelas) and none (0) opposed. The motion passes.**

Location:	53-59 Mason Street (Map 26, Lot 90) (NRCC Zoning District)
Applicant:	Cargill Storage Systems, LLC
Project:	A public hearing for all persons interested in the petition of CARGILL STORAGE SYSTEMS, LLC at 53-59 MASON STREET (Map 26, Lot 90) (NRCC Zoning District), for a Special Permit for per Section 3.3.2 <i>Nonconforming Uses</i> of the Salem Zoning for the purpose of having indoor year-round/seasonal storage of boats, classic automobiles and recreational vehicles.

Documents and Exhibitions

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

Chair Duffy introduces the petition.

Attorney Scott Grover introduces himself on behalf of the applicant and explains that the property is between Mason Street and Commercial Street, located in the North River Canal Corridor District (NRCC), but that the property was here before the NRCC was adopted. Mr. Grover explains that the building has a variety of commercial occupants, where all uses are nonconforming under existing ordinance. Mr. Grover indicates the applicant is intending to lease 14000 square feet in the building

for the purpose of year-round and seasonal storage, primarily of boats but also recreational vehicles. Mr. Grover emphasizes that there will be no storage of any kind outside the building, and that there will be no repairs or maintenance services provided. He also notes there are no exterior changes to the building proposed, and that the request is just a special permit for use. Prior to the applicant, the space was used by a moving company. Mr. Grover maintains that since the building is largely non-conforming, the use proposed can be allowed by special permit under Section 3.3.2 to go from one non-conforming use to another. Regarding the criteria the Board considers to make sure any adverse effects will not outweigh the benefits, Mr. Grover suggests that the proposal addresses a community need by providing indoor storage for resident boats and vehicles. With respect to traffic and parking, this type of storage involves limited trips to the facility that are mostly on a seasonal basis, and Mr. Grover suggests the traffic and parking impacts will be less than the prior moving business. Mr. Grover further explains that there is access to the property from both Mason and Commercial, but because of internal constraints the only real practical access for boats is through Commercial Street, and that Mr. Cargill intends to use that as an exclusive point of entry. Mr. Grover indicates there will be no impact on utilities, neighborhood character, or the natural environment, and that there will be a beneficial economic impact for the City.

Mr. Viccica asks to see the entrance on the plans. Mr. Grover demonstrates, and indicates the applicant would be open to a special condition requiring the entrance be on Commercial Street.

Ms. Ordaz asks about the hours of operation for entry/exit, and Mr. Grover indicates it would be 8AM to 6PM.

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

Chair Duffy summarizes the petition and discussion. Mr. Copelas asks if Mr. Grover is seeking a special permit simply out of an abundance of caution, noting that the space was previously used for storage, and so the use does not appear to really be changing. Mr. Grover states he felt the nature of the storage was a significant enough change that the right thing to do was to come to the Board.

Motion and Vote: Mr. Copelas motions to approve the petition of CARGILL STORAGE SYSTEMS, LLC at 53-59 MASON STREET (Map 26, Lot 90) (NRCC Zoning District), for a Special Permit for per Section 3.3.2 *Nonconforming Uses* of the Salem Zoning for the purpose of having indoor year-round/seasonal storage of boats, classic automobiles and recreational vehicles 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 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 following special conditions:

1. No outside storage of any boats or cars is to be permitted.
2. All deliveries to and from the site will be via Commercial Street
3. The hours of operation will be 8AM to 6PM

Ms. Ordaz seconds the motion. **The vote is six (6) in favor (Paul Viccica, Peter Copelas, Mike Duffy (Chair), Rosa Ordaz, Carly McClain, and Steven Smalley) and none (0) opposed. The motion passes.**

Location:	6 West Terrace (Map 33, Lot 739) (R1 Zoning District)
Applicant:	Amanda Coutts
Project:	A public hearing for all persons interested in the petition of AMANDA COUTTS at 6 WEST TERRACE (Map 33, Lot 739) (R1 Zoning District), for a Special Permit for per Section 3.2.2 <i>Home Occupations</i> of the Salem Zoning Ordinance to operate a massage practice in her home.

Documents and Exhibitions

- Application date-stamped February 3, 2022 and supporting documentation

Chair Duffy introduces the petition.

Amanda Coutts introduces herself, and explains that she is a professional licensed massage therapist (“LMT”) that has been practicing for approximately eight years. She states she is seeking a special permit to operate her massage practice in her home. Regarding social and community needs, Ms. Coutts explains that massage improves quality of life, health, helps with pain, anxiety, and tension, and brings healing to the community. She further explains that when working for others, often up to 50 percent of income can go toward the studio, and that this proposal would allow her to retain more of her income. Ms. Coutts maintains her Salem clients will have a local wellness option allowing them to reduce their carbon footprint, and states she will operate in a respectful and thoughtful manner. She informs there will be no signage or public posting of the address, no external noise or impact, and no change to the look of the home. Ms. Coutts indicates there will be minimal impact to traffic and parking, as she will only see one client at a time for sessions lasting 60 or 90 minutes. Additionally, she allows herself a minimum of a half hour between clients to clean and sanitize the space and write notes, meaning there will be no overlapping clients. According to Ms. Coutts, clients would park in front of the house, at no point would there ever be two cars in front relating to the house and business, as is currently the case. Ms. Coutts states she will meet clients on arrival to ensure they are properly parked, and if parking is an issue she will instruct them how to park offsite nearby. Ms. Coutts explains there will be no impact on utilities and the environment, and that she sees a maximum of five clients a day during daytime and early evening hours (to accommodate those who work daytime hours). She states her goal is to become a successful local small business owner and to improve the physical and mental wellbeing for Salem residents and nearby communities.

Chair Duffy asks about the interior space of the home where services will be provided, and Ms. Coutts explains the room is the size of a small bedroom. He asks if it will be more than 25 percent of the house, and Ms. Coutts confirms it will not be more than 25 percent. Chair Duffy next asks about the street parking. Ms. Coutts explains it is a dead-end street, and that all other residences on the street have private driveways. She also confirms that there is no thru-traffic.

Mr. Copelas asks if the property is a single family residence, and Ms. Coutts indicates it is. Mr. Copelas states he assumes she is a renter, and she corrects him to state that she is not. Mr. Copelas asks to confirm if she resides at the home, and Ms. Coutts states she does.

Ms. Ordaz asks Ms. Coutts to repeat the hours of operation and identify the entrance that will be used. Ms. Coutts states she would not take clients prior to 9AM or 10AM, and would not work later than early evening. Ms. Coutts explains that while the pandemic and working from home have given some people more flexibility to come during the day, she wishes to still be able to accommodate those clients who work until 5PM or 6PM and have less flexibility. She does not plan, however, to work late.

Mr. Viccica asks if she can specify an end time for the evening, perhaps for a special condition, as it would ensure the neighborhood evenings are respected. Mr. Viccica asks when the latest appointment would begin, and Ms. Coutts indicates the latest she would accept a client is 7PM. Mr. Viccica asks if operating hours of 9AM to 7PM would be reasonable, and Ms. Coutts indicates it is if that is what is necessary.

Vic asks to tease out specific time for evening as special condition

Chair Duffy opens the floor to public comment.

Bill Wholley of 8 West Terrace introduces himself and asks the Board if they have read the concerns submitted by the immediate neighbors. Chair Duffy states they have received the letters. Mr. Wholley states that many of the neighbors are elderly, and therefore require medical staff, visiting nurses, and cleaning crews during the day. As such, he contends that parking in the area is essential, and he raises concerns about parking availability. He also expresses concerns about the narrowness of the street and access for emergency vehicles. Mr. Wholley states that the area is primarily single-family homes, and that he purchased a home here for that reason. He expresses concern that the neighborhood will turn into a business area.

Rhonda Peterson of 7 West Terrace introduces herself and states that she and her husband purchased their home July of last year as their retirement home because of the neighborhood and lack of traffic. Ms. Peterson indicates she is concerned that changing a residential home into a commercial space is going to affect her own property values, and that it will be an issue for parking. She says her 92 year old mother lives with her, and that services come four times a week, as well as emergency services occasionally. She again states she believes allowing Ms. Coutts to operate her practice out of her home will affect her property values. Her husband, Richard Peterson introduces himself. Mr. Peterson, states he is concerned that some people think of massage businesses as being "less than reputable," and while he states he is not one of those people, he expresses concern that the desirability of his home will go down when attempting to sell if people ask, "what's that massage parlor over there". Mr. Peterson also expresses concerns regarding parking.

Joe Morrence of 4 West Terrace introduces himself and states he has lived here for 44 years. He states he is opposed to the proposal, suggesting traffic is already an issue in the area, particularly in the summer months with Forest River Park nearby. He also suggests that the new paid parking at the park will have people searching for other places to park. Colleen Morrence introduces herself, and states that 6 West Terrace does not have a driveway so the residents park their cars in front on the street, but that they have a spot that overlooks the park they could use. Ms. Morrence states that if they have both cars in front on the street and do not use the space in back or have clients use that space, then that would end up having three cars on the street. Ms. Morrence expresses that she does not want a business in the neighborhood.

Jen Pete of 25 West Terrace introduces herself and expresses concerns regarding parking. She states that when it snows in winter, the snow is pushed down to the end of the street, eliminating three parking spaces in front of 9, 7, and 25 West Terrace for two or three days at a time. Ms. Pete contends she had a hip injury during the winter which necessitating needing to park on the street instead of her driveway in the back of the house facing Clifton Avenue. Ms. Pete also states many drivers assume the street is a pass-through, come down, and then have to make a three-point turn. Ms. Pete says she is concerned that with Forest River Park and the new pool opening up parking will become an issue.

Chair Duffy acknowledges the letters received from the residents of 4 West Terrace and 25 West Terrace in opposition to the request. Chair Duffy also notes there was a letter from Jennifer Manarie of 3 West Terrace and Mr. and Ms. Bierbach of 2 West Terrace who stated they were neutral regarding the petition. The letter from the residents of 2 West Terrace state they are ok with it as long as it does not operate too early or late in the evening.

Chair Duffy asks the applicant if she would like a chance to address or respond to the public comments.

Ms. Coutts states she believes she has addressed every concern, and ensures there will be no change in the number of cars that currently park in front of the house. She states that operating her practice out of her home will result in an insignificant change to the neighborhood. Chair Duffy asks Ms. Coutts to confirm that there will be no signage, and she states that is correct.

Mr. Copelas refers to the parking space in the rear mentioned by a commenter, and notes that the lots on the even side of West Terrace appear to abut Forrest River Park. He asks Mr. St. Pierre if that is a legal access, and if the owners can go in through the park to their backyards. Mr. St. Pierre indicates he would need to look into the matter further to answer.

Mr. Viccica asks for clarification on the current parking situation. The applicant and homeowner explain that access and land beyond the back property is not theirs, and so they only park there during snow emergencies, and otherwise park their two cars out front. If a client were to be coming and both cars were present, they explain that one would be parked on a different street or at Forest River Park to allow the client to park in front.

Chair Duffy asks if there are limitations or restrictions regarding parking at Forest River Park. Ms. Coutts indicates she spoke to the Parks Department today and that parking will be by metered app, and that they told her she or her clients could utilize the parking there as an option. Ms. Coutts states the bottom line is that there will never be more cars parked in front than there are currently.

Mr. Viccica asks if one car will always be parked elsewhere then, and the applicant confirms that is what they are proposing. Mr. Viccica suggests they could condition that one of the two cars would need to be offsite during operating hours, but is unsure if that is possible. He states that they deserve, like their neighbors who happen to also have driveways, two parking spaces, and that he is trying to think of the right balance to allow the business to exist without creating adding to traffic.

Ms. McClain states the applicant has already stated they will never have more than two cars parked in front, and that the business owner will be responsible for making sure that happens. Ms. McClain also questions whether this is too onerous a recommendation, and asks if the other residents who have nurses and other services come to their home also go to any lengths to ensure they are only occupying two spots on the street. Ms. McClain suggests this is an unequal burden. Ms. McClain also states for the record that the public comment referring to massage therapy practices as places of ill repute is not only outrageous, but that the concerns regarding property values are misplaced. Ms. McClain clarifies that they are not asking for a permit to open up an illegal business or modify the existing home in any way. Ms. McClain opines that the proposal appears very reasonable, particularly in light of the proposed parking and hours of operation. Mr. Viccica clarifies that he was merely attempting to figure out the logistics since the applicant offered the limitation of two cars.

Chair Duffy asks if West Terrace is a street requiring resident permits/stickers for parking, and the applicant confirms it is. Chair Duffy asks if they will have a guest parking pass for when visitors, and potentially clients come to the house. Ms. Coutts confirms that is correct, and further explains that each parking permit is allowed one guest pass.

Ms. Ordaz confirms that if it is similar to her street, each residence is eligible for two resident parking passes and two guest passes. Ms. Ordaz states she agrees with Ms. McClain's comments. Ms. Ordaz also notes that she mapped the walk from Forest River Park to the address and that it is only a .02 mile walk, which seems reasonable for either the business owner or client as a parking option. Ms. Ordaz also suggests it is unfair for other property owners on the street to view their guests and service workers as more important or valid than the applicants. Ms. Ordaz clarifies that this is a public street, and if the applicant wanted two they could have both cars parked on the street and two guests, just like any other household. Ms. Ordaz states she believes the issue of parking has been adequately addressed.

Mr. Copelas also states the parking concerns appear to be overwrought, particularly since the other households have driveways.

Chair Duffy addresses the special permit criteria, states that the proposal is not any more detrimental to neighborhood based on the facts and information presented.

Mr. Viccica suggests a special condition about the hours of operation, perhaps 9AM to 7PM if the applicant is amenable.

Mr. Laroe notes that Ms. Pete would like to make an additional comment. Ms. Pete states that regarding cleaners, nurses, and service workers, she would like to make it clear that they do not come every day. Ms. Peterson also provides additional comment, asking what the days of operation will be, and suggests it will make a huge difference if the business operates weekends.

Ms. Coutts clarifies that she would start no earlier than 9AM, and that she would take her last client no later than 7PM for a 60 minute session. Regarding days of the week, she states she will not be working every day, and that she does not have set days in mind based on the nature of the business. She states that weekend clients would not be her preference or the norm as she likes to have weekends off, but that she also likes to be flexible to occasionally accommodate a client who is unable to make it during the week.

Chair Duffy asks about reworking her availability, and suggests Monday through Saturday with Saturday being a half day. He acknowledges it may not make sense for her business needs, but that he is trying to frame and flesh out the discussion. Ms. Coutts responds that it might be more feasible or reasonable to limit the number of weekend clients, rather than specific hours, perhaps a maximum of three clients.

Mr. Copelas states we need to be realistic about the enforcement of any conditions, noting that the City is not going to position someone outside to make sure there are only three appointments a day, and from a small business point of view she likely does not want to work weekends regularly or overextend herself. Based on the way this type of business operates, Mr. Copelas suggests the concerns raised are exaggerated.

Mr. Viccica states he would like to clear that Salem plenty of businesses where we have asked to them to dictate hours of operation. He suggests he would simply like to define some parameter so that no one can show up at 3AM.

Motion and Vote: Ms. Ordaz motions to approve the petition of AMANDA COUTTS at 6 WEST TERRACE (Map 33, Lot 739) (R1 Zoning District), for a Special Permit for per Section 3.2.2 *Home Occupations* of the Salem Zoning Ordinance to operate a massage practice in her home subject to the following standard conditions:

1. Petitioner shall comply with all city and state statutes, ordinances, codes, and regulations.
2. All requirements of the Salem Fire Department relative to smoke and fire safety shall be strictly adhered to.
3. A Certificate of Occupancy is to be obtained.
4. A Certificate of Inspection is to be obtained.
5. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.

And the following special condition:

1. Operating business hours shall be from 9AM to 8PM, seven days a week.

Ms. McClain seconds the motion. **The vote is six (6) in favor (Carly McClain, Steven Smalley, Rosa Ordaz, Paul Viccica, Peter Copelas, and Mike Duffy (Chair)) and none (0) opposed. The motion passes.**

Location:	16 Loring Avenue (Map 32, Lot 88) (R2 Zoning District)
Applicant:	Sandra S. Power
Project:	A public hearing for all persons interested in the petition of SANDRA S. POWER at 16 LORING AVENUE (Map 32, Lot 88) (R2 Zoning District), for a Special Permit for

per Section 3.3.2 *Nonconforming Uses* of the Salem Zoning Ordinance to add an additional dwelling unit on the second floor to convert the five (5) family use to a six (6) family use.

Documents and Exhibitions

- Application date-stamped February 14, 2022 and supporting documentation

Chair Duffy introduces the petition, and notes there is a request to continue the matter.

Attorney Bill Quinn introduces himself and explains the applicant would like to continue to the next regularly scheduled meeting. He further explains that the application was filed in a flurry of deadlines and was requested as a special permit, but that after further reflection a variance will also be required for square footage per dwelling unit. Mr. Quinn asks to continue to the April meeting to amend the petition.

Motion and Vote: Mr. Copelas motions to continue the petition of SANDRA S. POWER at 16 LORING AVENUE (Map 32, Lot 88) (R2 Zoning District), for a Special Permit for per Section 3.3.2 *Nonconforming Uses* of the Salem Zoning Ordinance to add an additional dwelling unit on the second floor to convert the five (5) family use to a six (6) family use to the next regularly scheduled meeting on April 27, 2022.

Mr. Viccica seconds the motion. **The vote is six (6) in favor (Rosa Ordaz, Mike Duffy (Chair), Paul Viccica, Peter Copelas, Carly McClain, and Steven Smalley) and none (0) opposed . The motion passes.**

Location:	435-443 Highland Avenue (Map 3, Lot 127) (B2/ECOD Zoning District)
Applicant:	Life Storage LP
Project:	A public hearing for all persons interested in the petition of LIFE STORAGE LP at 435-443 HIGHLAND AVENUE (Map 3, Lot 127) (B2/ECOD Zoning District), for a variance per Section 8.2.6 <i>Signage</i> of the Salem Zoning Ordinance for relief to place signage approved by the Design Review Board on the front of the building to a maximum height of 29 feet where 25 feet is required.

Documents and Exhibitions

- Application date-stamped February 15, 2022 and supporting documentation

Chair Duffy introduces the petition.

Attorney Bill Quinn introduces himself and explains that he was before the Board previously obtaining necessary variances to construct, as well as the Planning Board which approved the site plan a few years ago. Mr. Quinn contends the Planning Board recognized that a height of 29 feet would be reasonable and within the design standards of the company for all of its facilities. Mr. Quinn adds that the Design Review Board (“DRB”) also recommended a similar finding that would allow the signage to be this size at 29 feet rather than the 25 foot limit in the City sign ordinance. Mr. Quinn states he believes there are grounds for the Board to make this decision under Section 4.44 of the signage ordinance, and that relief can be granted without substantial detriment. Mr. Quinn states that while he has not attempted to articulate the standard hardship grounds, if the

Board were to make a determination at this stage other than approval after the project has been vetted and signage recommended it could present a difficulty.

Mr. Viccica asks about practical difficulties, stating Mr. Quinn still needs to discuss them. Mr. Quinn states it is a combination of the fact that the final plans have been vetted by planning and the DRB, and that during the process it was recognized that signage would be an issue that would be dealt with at a later time. Mr. Quinn states the applicant cannot obtain a building permit without the relief. Mr. Quinn further argues that the practical difficulty exists because the applicant is a national company with an 86 page standard of specifications giving guidance for facilities, uniform design, and signage, and that this is what they proposed and the City boards to date have approved. Mr. Quinn maintains that one criteria of the design catalogue is that signage be placed in a location that is the same height as any glazing of windows nearby. He states the issue is needing to redesign aspects of the project.

Mr. Copelas states he is confused at the mention of Section 4.44 as the requested variance is per Section 8.2.6 of the Salem Zoning ordinance, and asks Mr. Quinn to clarify. They discuss the issue further, and Mr. Quinn states he is unsure which section is more appropriate for the relief sought but that it could be through either avenue. Mr. Copelas also notes that the DRB is an advisory board to the SRA, that can also weigh in on overlay district issues. He states that they serve in an advisory capacity, in other words, they did not approve any signage as much as they recommended it, and he suggests the terminology is important. Mr. Copelas questions Mr. Copelas explanation of practical difficulty, and suggests that just because a company has a specific design manual does not mean the Board would need to approve some design therein that does not conform to the ordinance.

Mr. Viccica agrees, and suggests the stated difficulty is unconvincing. Mr. Viccica suggests a better argument would be that the location is an entirely different part of Salem unlike downtown that might require signage, particularly competing for advertisement with nearby large signage such as that for WalMart, as opposed to the argument that “corporate says so”.

Mr. Quinn suggests he did not intend to say the Board is required to do anything except provide the applicant with a hearing. He goes on to state he merely was attempting to point out that the project has been permitting in Salem for three years and at every level the sign and height were discussed, and that we are not a place where plans are final and the applicant is ready to build. Mr. Quinn states they are trying to follow the design standards they have and have applied them throughout the whole process. He again states the practical difficulty would be needing to regroup if approval was not granted.

Mr. Viccica states that, for better or worse, at some point it was decided Salem has its own standard for signage and the ZBA must arbitrate on it.

Chair Duffy asks about the plan measurements, and whether the height is in relation to the finished grade or sidewalk, and where the measurement begins for the ordinance standard. The Chair and Mr. Quinn discuss whether there is a difference between the finished grade on site and the sidewalk elevation. After some discussion, Mr. St. Pierre clarifies that for the ordinance is measured as the average grade across the front. Mr. St. Pierre also offers that while he does not wish to contradict the Board, other boards have been charged with the issue of aesthetics and scale, and that he believes the ordinance is about keeping things consistent rather than about punishing people. He

notes that while the other boards do not have the authority to grant the requested relieve, they have indicated they are comfortable with the sign. Mr. St. Pierre suggests the building is large and the signage seems appropriately scaled.

Chair Duffy states it is not lost on the Board that nearby billboards and commercial signage in this particular area are rather large and difficult to compete with.

Mr. Viccica states that he personally thinks the signage ordinance as applied was conceived primarily for the downtown area, and that a lack of vision of whoever created them did not seem to understand that when you apply the same standard for places like Highland Avenue, this requires a discussion of how the aesthetic and context are entirely different. Mr. Viccica clarifies that he is not objecting to the proposed signage, but rather the reasoning behind the argument, that the Board must approve the petition because other Boards that cannot arbitrate the matter somehow tell us it must. Moreover, Mr. Viccica indicates he objects to the idea the corporations get to dictate when town standards apply just because of their own aesthetic design standards. Mr. Viccica states that the Board's obligation is to look at the ordinance as written, and suggests that when describing a practical difficulty, the notion of other boards and corporate saying so is insufficient. He again states that a more compelling argument would be that strict adherence to the signage ordinance in the Highland Avenue area with all the huge signs would render the petitioners sign lost, but that is not what has been proposed.

Chair Duffy says this issue may be akin to a square peg being fit into a round hole with regards to the location of Highland Avenue. He suggests in order to try to give application its best recasting, it might be fair to say adhering to the sign ordinance in this location presents a practical difficulty in the sense that there exists a cacophony of signs in area, particularly with Walmart directly across street. Chair Duffy also acknowledges that there have been persuasive recommendations from a design perspective from other bodies that have not found the design to be a problem. Given those considerations, he suggest it might be something the Board could act on after any public comment.

Mr. Copelas notes that the entrance corridor overlay districts involve North Street, Jefferson Avenue, Loring Avenue, Boston Street, Highland Avenue and others, but that Highland Avenue is so fundamentally different. He agrees with Mr. Viccica's point that a one-size-fits-all approach is probably not best, but that unfortunately the Board is hemmed in by the overlay district requirements. Mr. Copelas acknowledges the points made by Mr. St. Pierre and Chair Duffy, but states he also sympathizes with Mr. Viccica's concerns.

Chair Duffy opens the floor to public comment.

Tracy Almeter introduces herself as the sign project manager for Life Storage. Ms. Almeter discusses the variance process some more, and states that they had to get a taller building height approved, which is part of the reason for having the sign higher up on the building. She also notes drainage and flooding issues requiring the building to be higher than the sidewalk street grade. She states the design guidelines are simply guidelines, and suggests the proposal is appropriate in scale for the building and context of the surrounding area and site.

Mr. Viccica states he draws the line when the Board begins making arguments on behalf of the applicant, and will therefore be opposing any motion on the petition.

Motion and Vote: Ms. Ordaz motions to approve the petition of LIFE STORAGE LP at 435-443 HIGHLAND AVENUE (Map 3, Lot 127) (B2/ECOD Zoning District), for a variance per Section 8.2.6 *Signage* of the Salem Zoning Ordinance for relief to place signage approved by the Design Review Board on the front of the building to a maximum height of 29 feet where 25 feet is required subject to the following standard conditions:

1. Petitioner shall comply with all city and state statutes, ordinances, codes, and regulations.
2. Petitioner shall obtain a building permit prior to beginning any construction.
3. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.
4. 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 two (2) in favor (Rosa Ordaz, and Mike Duffy (Chair)) and three (3) opposed (Peter Copelas, Paul Viccica, Carly McClain). The motion fails.**

MEETING MINUTES

February 16, 2022

Chair Duffy states he has no proposed changes or edits.

Motion and Vote: Mr. Viccica motions to approve the February 16, 2022 Zoning Board of Appeal meeting minutes as amended. Ms. McClain seconds the motion. **The vote is six (6) in favor, and none (0) opposed. The motion passes.**

OLD/NEW BUSINESS

Chair Duffy mentions the need to have a special meeting regarding an upcoming comprehensive permit, and asks Mr. Laroe to coordinate a date with the Board members that would work.

says Dan sent email about upcoming comprehensive permit where might need to have special meetings, requested some dates

Ms. Ordaz informs the Board that she is eight months pregnant and due in early May. She states she is unsure if she will be able to attend the late April meeting, but plans to if she can. She states she will be unavailable for the May meeting as well as a few after that. Mr. Copelas congratulates Ms. Ordaz, and suggests she take as much time as she needs. Mr. Copelas also notes that the Board is down a member and needs to encourage the City to find another. The other Board members also congratulate Ms. Ordaz.

Mr. Laroe also notes that Mr. Viccica's membership expires in May. Mr. Viccica confirms his last day would be May 18th unless he continues as a Board member.

ADJOURNMENT

Motion and Vote: Mr. Copelas motions to adjourn the meeting. Ms. Ordaz seconds the motion. The vote is all in favor. The motion passes.

The meeting ends at 9:15 PM on March 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 Laroe, Staff Planner