

City of Salem Zoning Board of Appeals
Meeting Minutes
November 15, 2023

A meeting of the Salem Zoning Board of Appeals (“Salem ZBA”) was held on Wednesday, November 15, 2023 at 6:30 pm via remote participation in accordance with Chapter 2 of the Act of 2023 and a Special Act extending remote participation meetings.

Chair Peter Copelas calls the meeting to order at 6:30 pm.

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

ROLL CALL

Those present were: Peter Copelas (Chair), Nina Vyedin, Paul Viccica, Carly McClain, and Hannah Osthoff. Also in attendance were Daniel Laroe – Staff Planner, Voula Orfanos — Acting Zoning Officer, and Jonathan Pinto – Recording Clerk. Those absent were: Rosa Ordaz

CONTINUANCES

Location: **75 North Street (Map 26, Lot 58) (BPD, NRCC Zoning Districts)**

Applicant: **75 North Street, LLC**

Project: A continuation of a public hearing for all persons interested in the petition of 75 NORTH STREET, LLC at 75 NORTH STREET (Map 26, Lot 58) (BPD, NRCC Zoning Districts), 3 SOUTH MASON STREET (Map 26, Lot 54) (NRCC Zoning District), 2 COMMERCIAL STREET (Map 26, Lot 57) (NRCC Zoning District) to re- develop a new four-story transit oriented mixed-use development that will consist of 60 units and a small commercial office space on North Street. The applicant is seeking variances per section 4.1.1 Dimensional Requirements from lot area per dwelling unit where 3,500 sq.ft is required and 742 sq.ft is proposed. A variance from Section 8.4.9 Parking Requirements where one space is proposed and 1.5 spaces are required. And a variance from Section 8.4.5(4.4c) Each unit has a separate exterior entrance if located within 100 feet of a residentially used parcel in an abutting zoning district. This parcel is within 100 feet of a residentially used parcel. Also, a variance from Section 8.4.13(4) to allow construction of a park area and parking spaces in the buffer area.

Documents and Exhibitions

- Application date-stamped August 29, 2023 and supporting documentation

Chair Copelas introduces the petition.

Attorney Scott Grover introduces himself on behalf of the petitioner, and states he will be joined by project members Chris Koeplin, Michael Page, Dan Skosky, and Scott Thornton. Mr. Grover indicates this is the third time before the Board discussing the project, and he provides a recap of the fundamental features. The proposal is for 60 units of mixed use, transit oriented development that is height compliant at 50 feet, with four stories and first floor parking. Mr. Grover also states the proposal is floor area ratio (“FAR”) compliant, buffer compliant, and use compliant. Ten

percent of the units (six units) will be affordable at 60 percent area median income (“AMI”). Mr. Grover summarizes the relief being sought for parking (60 spaces provided where 90 spaces required), density, and from having separate entrances. He characterizes the properties as severely underutilized, and contends many in the neighborhood are in favor of the proposed development, and that planning board members and city councilors are in favor of adding housing. Mr. Grover reminds the Board this is the first step in a rigorous permitting process that includes site plan review by the planning board, design review board, and conservation commission, as well as DEP Chapter 91 requirements and a demolition delay waiver from the historical commission.

Mr. Thornton next discusses parking and traffic concerns raised from prior meetings. Parking counts of two nearby residential developments were conducted (South Mason Street development and Halstead Apartments), and Mr. Thornton suggests that the Halstead development is most comparable as they are both rentals with similar characteristics and proximity to transit. At Halstead, the parking ratio utilization is 0.9 spaces per unit, which fits with the current proposal, according to Mr. Thornton. He also states that the Salem MAPC data for perfect fit parking came in with an average of 0.96 spaces per unit at four residential sites in Salem. Mr. Thornton states there are few changes in response to the last meeting, but that traffic counts were conducted at the intersection of Franklin and North Street to get a sense of current traffic flow and how the intersections might be impacted by additional developments and the proposal. Despite counts being in October and using seven years of background growth to project the addition of the developments, Mr. Thornton states the volumes are not high enough to warrant installation of a traffic signal. Crash data and pedestrian data was also reviewed and none of the thresholds were triggered. Mr. Thornton explains that the team has considered potential modifications and presents an aerial view of a new striping concept. If the proposal moves forward, he contends that input from the traffic and parking department would be sought along with a consultant peer review. Mr. Thornton also maintains that the proposal enhances on street parking by adding nine spaces on Commercial Street.

Mr. Viccica asks whether it is the project’s responsibility to provide the changes shown, or if this is something the team would recommend to the City regarding the intersection. Mr. Thornton suggests it is too early to identify who the responsible party is, but that the team is looking to make improvements in the area overall. Mr. Viccica asks if, as a traffic consultant, Mr. Thornton would recommend no left turns from Green Trail Road onto North Street/Route 114. Mr. Thornton states he would not based on the traffic counts conducted. Mr. Viccica notes that this is not the only new development in the area, and suggests that a comprehensive discussion with all the developments and relevant City agencies could be beneficial. Attorney Grover states the team expects more discussion to take place regarding traffic impacts and potential changes at the planning board.

Michael Paige from Griffin Engineering introduces himself and presents elevations demonstrating existing conditions, FEMA flood zones, and other relevant information. He also presents the proposed layout, with added topography data. Mr. Paige states no fill will be brought on site and that there will be no decrease in total flood storage capacity. He discusses the garage elevation and those of the entrance/exit ramps at North Street and South Mason. Mr. Paige notes there are three parking spots in the garage that would be impacted by 100 year flood events with less than a foot of flooding. He also discusses current king tide and flood conditions. Mr. Koeplin adds that in flood events, cars will still be able to get out.

Mr. Viccica points out that based on the elevation on the North Street side of 8.5, the elevator serving that entrance will likely need to have an elevator pit around elevation 4.5, which would be lower than king tide levels. He suggests the team consider the likelihood of water infiltration and rendering the elevator to have frequent issues, and to plan for resiliency measures. He also asks why there is an entrance on North Street. Mr. Koeplin discusses public accommodation zone restrictions and require the entrance to be located where proposed. Mr. Grover adds that the residential neighbors do not want regular access from South Mason Street, and that egress is meant to be for emergencies.

Mr. Viccica suggests the arguments made regarding rental versus owning with respect to parking seem reasonable, and asks if it would make sense to have a stipulation or special condition that none of the parking be assigned to any particular residence. Mr. Koeplin states he would entertain such a condition, but would want to study it more. Mr. Viccica states the decision would need to be made tonight. The Board and consultants continue to discuss the issue of parking and potential condition. Mr. Koeplin states he is open to the condition, and the Board agrees they are in favor of unassigned parking as the most efficient use.

Mr. Koeplin next discusses the project financial feasibility, noting current lending rates of eight percent and lower loan to value thresholds requiring 10 to 15 percent additional equity compared to recent years. Mr. Koeplin discusses fixed costs of land, remediation, and also presents market rent data. He concludes that if the project were reduced to 40 units, market rents would need to increase by approximately \$567 per unit to make the project economically feasible. With 60 units, the average price per unit can be closer to \$2,775 per month.

Chair Copelas indicates the Board received 17 comments, ten in favor, and seven opposed. He opens the floor to public comment.

Penelope Caritas (no address provided) states she spoke at the last meeting, and contends some issues, such as flooding, have not been addressed. She argues she has not heard any comments from the City or developers regarding how to address flooding. Ms. Caritas also discusses parking concerns, and suggests this street should be a commercial area not a residential one.

Justin Whittier of 10 River Street introduces himself and states he was disturbed that the public comment letter he submitted was not mentioned. He reads his letter aloud, stating there is no justification for any of the requested variances and that none of the criteria have been satisfied. Mr. Whittier voices his concerns and speaks in opposition, stating that there are no existing hardships here that are not self-inflicted, as purchasing a property with a desire to develop it is not a hardship.

The Board confirms that Mr. Whittier's letter was received and in the public record. His letter is available for any member of the public to see online.

Killian O'Connell of 190 Bridge Street introduces herself, and expresses support for the proposal. Ms. O'Connell states she wishes there was by-right zoning for this project, as it adds critically needed housing supply along with other benefits to revitalize the area. She also contends that these are licensed professionals who have adequately addressed the safety and flood concerns. Ms. O'Connell states she would be fine with the project being seven stories and having a green roof if that were proposed.

Mr. Grover reiterates the requested variances and previously stated hardships.

Motion and Vote: Mr. Viccica motions to approve the petition of 75 NORTH STREET, LLC at 75 NORTH STREET (Map 26, Lot 58) (BPD, NRCC Zoning Districts), 3 SOUTH MASON STREET (Map 26, Lot 54) (NRCC Zoning District), 2 COMMERCIAL STREET (Map 26, Lot 57) (NRCC Zoning District) to re- develop a new four-story transit oriented mixed-use development that will consist of 60 units and a small commercial office space on North Street, seeking variances per section 4.1.1 Dimensional Requirements from lot area per dwelling unit where 3,500 sq.ft is required and 742 sq.ft is proposed, a variance from Section 8.4.9 Parking Requirements where one space is proposed and 1.5 spaces are required, a variance from Section 8.4.5(4.4c) as this parcel is within 100 feet of a residentially used parcel and each unit will not have a separate exterior entrance, and a variance from Section 8.4.13(4) to allow construction of a park area an parking spaces in the buffer area, subject to the following standard conditions:

1. Petitioner shall comply with all city and state statutes, ordinances, codes, and regulations.
2. All construction shall be done as per the plans and dimensions submitted to and approved by the Building Commissioner.
3. All requirements of the Salem Fire Department relative to smoke and fire safety shall be strictly adhered to.
4. Petitioner shall obtain a building permit prior to beginning any construction.
5. A Certificate of Occupancy is to be obtained.
6. A Certificate of Inspection is to be obtained.
7. Petitioner shall obtain street numbering from the City of Salem's Assessor's Office and shall display said number so as to be visible form the street.
8. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.
9. All construction shall be done per the plans and dimension submitted to and approved by this Board. Any modification to the plans and dimensions must be approved by the Board of Appeals unless such changes are deemed a minor field change by the Building Commissioner in consultation with the Chair of the Board of Appeals.
10. Petitioner shall schedule Assessing Department inspections of the property, at least annually, to project completion and a final inspection upon project completion.

And the following special conditions:

1. The parking spaces shall not be assigned to any particular unit or resident.

Ms. McClain seconds the motion. **The vote is five (5) in favor (Nina Vyedin, Peter Copelas, Paul Viccica, Carly McClain, and Hannah Osthoff) and none (0) opposed. The motion passes.**

Location: **38 Willson Street (Map 24, Lot 39) (R1 Zoning District)**

Applicant: **Gaetano Fodera**

Project: A public hearing for all persons interested in the petition of GAETANO FODERA at 38 WILLSON STREET (Map 24, Lot 39) (R1 Zoning District) for a Special Permit per Section 3.3.3 Nonconforming Structures of the Salem Zoning Ordinance to extend the existing second-floor mudroom approximately 10 feet outward to be flush with the existing deck. The existing deck would also be closed by the extension of the existing roof. Also, a Variance per section 4.1.1 Dimensional Requirements for insufficient lot area.

Documents and Exhibitions

- Application date-stamped September 6, 2023 and supporting documentation

Chair Copelas introduces the petition.

Marc Maniscalco introduces himself on behalf of the petitioner and explains that pursuant to discussion with the building commissioner, the variance request has been stricken. The petitioner only seeks a special permit now. Mr. Maniscalco summarizes the petition and presents photos of the existing structure and conditions. He discusses the proposed addition and presents renderings.

Ms. Osthoff asks to see the site plan, and Mr. Maniscalco presents it. The Board discusses the ability to step down from an advertised request, and that going from a variance to a special permit request does not require further advertisement as it is a lower bar or threshold requirement. Ms. Osthoff reads Section 3.3.3 language and the Board discusses the special permit request.

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

Motion and Vote: Ms. Vyedin motions to approve the petition of GAETANO FODERA at 38 WILLSON STREET (Map 24, Lot 39) (R1 Zoning District) for a Special Permit per Section 3.3.3 Nonconforming Structures of the Salem Zoning Ordinance to extend the existing second-floor mudroom approximately 10 feet outward to be flush with the existing deck, subject to the following standard conditions:

1. Petitioner shall comply with all city and state statutes, ordinances, codes, and regulations.
2. All construction shall be done as per the plans and dimensions submitted to and approved by the Building Commissioner.
3. All requirements of the Salem Fire Department relative to smoke and fire safety shall be strictly adhered to.
4. Petitioner shall obtain a building permit prior to beginning any construction.
5. Exterior finishes of the new construction shall be in harmony with the existing structure.
6. A Certificate of Occupancy is to be obtained.
7. A Certificate of Inspection is to be obtained.
8. Petitioner shall obtain street numbering from the City of Salem's Assessor's Office and shall display said number so as to be visible from the street.
9. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.
10. Unless this Decision expressly provides otherwise, any zoning relief granted does not empower or authorize the Petitioner to demolish or reconstruct the structure(s) located on the subject property to an extent of more than fifty percent (50%) of its floor area or more than fifty percent (50%) of its replacement cost at the time of destruction. If the structure is demolished by any means to an extent of more than fifty percent (50%) of its

replacement cost or more than fifty percent (50%) of its floor area at the time of destruction, it shall not be reconstructed except in conformity with the provisions of the Ordinance.

11. All construction shall be done per the plans and dimension submitted to and approved by this Board. Any modification to the plans and dimensions must be approved by the Board of Appeals unless such changes are deemed a minor field change by the Building Commissioner in consultation with the Chair of the Board of Appeals.
12. Petitioner shall schedule Assessing Department inspections of the property, at least annually, to project completion and a final inspection upon project completion.

Ms. Osthoff seconds the motion. **The vote is five (5) in favor (Peter Copelas, Nina Vyedin, Paul Viccica, Carly McClain, and Hannah Osthoff) and none (0) opposed. The motion passes.**

REGULAR AGENDA

Location: **5 Fairfield Street (Map 34, Lot 32) (R2 Zoning District)**

Applicant: **Walter S. Palmer**

Project: A public hearing for all persons interested in the petition of WALTER S. PALMER at 5 FAIRFIELD STREET (Map 34, Lot 32) (R2 Zoning District) for a Special Permit per Section 3.3.5 Nonconforming Single- and Two-Family Residential Structures of the Salem Zoning Ordinance to alter a non-confirming one-family structure to a nonconforming two-family structure by adding a basement dwelling unit. There will be no exterior work or expansion of the existing building's footprint for this petition. Also, the applicant is seeking a variance from 5.1.5 and 5.1.6 Off-Street Parking Design, applicant's driveway is eleven feet wide where twelve feet is required. In addition, one parking space is eighteen feet long, nineteen feet is required.

Documents and Exhibitions

- Application date-stamped October 11, 2023 and supporting documentation

Chair Copelas introduces the petition.

Attorney Bill Quinn introduces himself on behalf of the petitioner and describes the property as a traditional single family home. He indicates the petitioner raised his family here and would like to stay. Mr. Quinn explains the basement space has full head space and six windows in whole or in part that illuminate the space, and that part of it has already been cleaned up and used as a workshop or den. The request is to create a separate unit in the building, which is an allowed use in the R2 Zone. Mr. Quinn states there is no exterior work or footprint expansion, but that relief is needed from parking dimensional requirements. He presents the plot plan and discusses the parking and proposed dimensions, noting one parking space is a foot short, but suggests that the space is adequate at 18 feet considering the average sedan is 16 feet long.

Chair Copelas notes that nothing can be done about the width of the driveway, but asks why one foot cannot be taken from one of the other 22 foot spaces if the requirement is 19 feet. Ms. Osthoff agrees, noting it could reduce the number of variances needed. Ms. Vyedin suggests the 22 feet may be to allow for parallel parking. The Board discusses the parking configuration a bit, and

Mr. Quinn explains that there is a small stairway on the side of the house in front of one of the parking spaces, which poses some limitations as to how close it can be and allow the stairway to function. He states a lot of time was spent working on the parking plan, and that the proposal was determined to be the best compromise.

Ms. Vyedin asks why one parking space could not be in the garage. Mr. Quinn explains it is currently used for storage, and Mr. Copelas indicates it would not alter the required relief anyway because of the driveway dimensions and location of the spot number one.

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

The Board discusses the three egresses and parking generally. Ms. Vyedin asks about visibility backing up from the driveway, and the applicant explains that there is fairly good visibility, but that they usually back into the driveway anyway. Mr. Quinn suggests the request is dimensionally minimal and should be approved.

Motion and Vote: Ms. Osthoff motions to approve the petition of WALTER S. PALMER at 5 FAIRFIELD STREET (Map 34, Lot 32) (R2 Zoning District) for a Special Permit per Section 3.3.5 Nonconforming Single- and Two-Family Residential Structures of the Salem Zoning Ordinance to alter a non-confirming one-family structure to a nonconforming two-family structure by adding a basement dwelling unit, a variance from 5.1.5 and 5.1.6 Off-Street Parking Design for an eleven foot wide driveway where twelve feet is required, and one parking space is eighteen feet long where nineteen 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. A Certificate of Occupancy is to be obtained.
6. A Certificate of Inspection is to be obtained.
7. Petitioner shall obtain street numbering from the City of Salem's Assessor's Office and shall display said number so as to be visible from the street.
8. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.
9. Unless this Decision expressly provides otherwise, any zoning relief granted does not empower or authorize the Petitioner to demolish or reconstruct the structure(s) located on the subject property to an extent of more than fifty percent (50%) of its floor area or more than fifty percent (50%) of its replacement cost at the time of destruction. If the structure is demolished by any means to an extent of more than fifty percent (50%) of its replacement cost or more than fifty percent (50%) of its floor area at the time of destruction, it shall not be reconstructed except in conformity with the provisions of the Ordinance.
10. All construction shall be done per the plans and dimension submitted to and approved by this Board. Any modification to the plans and dimensions must be approved by the Board of Appeals unless such changes are deemed a minor field change by the Building Commissioner in consultation with the Chair of the Board of Appeals.

11. Petitioner shall schedule Assessing Department inspections of the property, at least annually, to project completion and a final inspection upon project completion.

Ms. Vyedin seconds the motion. **The vote is five (5) in favor (Nina Vyedin, Carly McClain, Peter Copelas, Hannah Osthoff, and Paul Viccica) and none (0) opposed. The motion passes.**

Location: **45 Jefferson Avenue (Map 25, Lot 653) (I Zoning District)**

Applicant: **Boston Bud Runners, LLC**

Project: A public hearing for all persons interested in the petition of BOSTON BUD RUNNERS LLC at 45 JEFFERSON AVENUE (Map 25, Lot 653) (I Zoning District) for a Special Permit per Section 3.1.4 Table of Principal and Accessory Use Regulations, Section 9.4.2 Special Permit Criteria to operate a marijuana delivery business. In addition, a Variance from 5.1.5 Off-street parking- Design of the Salem Zoning Ordinance proposes aisle width of twenty (20) feet where twenty-four (24) feet is required.

Documents and Exhibitions

- Application date-stamped October 25, 2023 and supporting documentation

Chair Copelas introduces the petition.

Attorney Bill Quinn introduces himself on behalf of the petitioner.

Chair Copelas explains his business rents space at 45 Jefferson Avenue, but that he has no financial or other interest in the outcome of this petition, and therefore will not recuse himself.

Mr. Quinn explains the petitioner is seeking a delivery only cannabis license, which is allowed in Salem. He states the underlying provisions of zoning allow for delivery in City with a special permit. Mr. Quinn describes the property and area, noting the property and zoning are both industrial, and that it sits in the middle of other commercial and industrial zones. Mr. Quinn explains there are no prohibited neighbors or ones that need additional notice such as schools, daycares, religious institutions, etc. He notes that safety and other regulations are all handled at the state level, and that the applicant will seek an operating agreement with the City through the Mayor. Mr. Quinn describes the business model of delivering marijuana products by van or SUV to residents, and indicates all product will be secured on the premises. Mr. Quinn maintains that the police and fire departments have seen the security, operating, and emergency plans and provided input. There are no residential neighborhoods nearby. Mr. Quinn discusses the parking plan for three spaces, noting there will be no retail customers and no need for customer parking. Mr. Quinn notes that the variance being requested is dimensional, and that relief is needed because the egress/access is four feet shorter than required.

Chair Copelas states he does not understand the variance request, noting that parking spaces three and four in the site plan are what create the need for the variance for the driveway. He asks why the petitioner is seeking a variance when slight modifications appear possible that could eliminate the need.

Mr. Quinn states that the commercial landlord who executed the lease has been parceling out parking on the lot frugally, and that the proposal was based on lease provisions and landlord consent. Mr. Copelas suggests that a landlords request of where to place parking does not fulfill the requirements of a variance. Mr. Viccica states that the Board should not be creating illegal parking spots for tenants and that he does not see a valid hardship here. He suggests the petitioner go back to the landlord and negotiate for legal, non-variance required and non-restrictive parking.

Mr. Quinn indicates he understands, and states he is willing to continue the petition and come back after further discussions and negotiations.

Mr. Viccica asks that when the returning before the board the petitioner provides hours of operation, van sizes, and other additional details.

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

Motion and Vote: Mr. Viccica motions to continue the petition of BOSTON BUD RUNNERS LLC at 45 JEFFERSON AVENUE (Map 25, Lot 653) (I Zoning District) for a Special Permit per Section 3.1.4 Table of Principal and Accessory Use Regulations, Section 9.4.2 Special Permit Criteria to operate a marijuana delivery business, and a Variance from 5.1.5 Off-street parking- Design of the Salem Zoning Ordinance for proposed aisle width of twenty (20) feet where twenty-four (24) feet is required to the next regularly scheduled meeting of the zoning board of appeals on December 13, 2023.

Ms. Vyedin seconds the motion. **The vote is five (5) in favor (Nina Vyedin, Peter Copelas, Carly McClain, and Hannah Osthoff) and none (0) opposed. The motion passes.**

MEETING MINUTES

October 18, 2023

Chair Copelas states he has reviewed and has no edits.

Ms. Osthoff notes her name is misspelled on page 8, and that there is a missing second on a motion.

Motion and Vote: Ms. Vyedin motions to approve the minutes from the October 18, 2023 meeting of the Zoning Board of Appeals, as amended. Ms. Osthoff seconds the motion. **The vote is three (2) in favor, two (2) abstained, and none (0) opposed. The motion passes**

OLD/NEW BUSINESS

Extension Request for 50 Circle Hill Road

Chair Copelas introduces the petition but notes the extension is not being requested because they will instead need to refile.

Board of Appeals Schedule of 2024

The Board discusses the meeting dates for 2024. The meetings will be the third Wednesday of the month with some exceptions for school vacation considerations in February and April.

Motion and Vote: Ms. McClain motions to approve the 2024 Board of Appeals meeting schedule. Ms. Osthoff seconds the motion. **The vote is five (5) in favor and none (0) opposed. The motion passes**

Next Meeting
December 13, 2023

ADJOURNMENT

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

The meeting ends at 9:21 PM on November 15, 2023.

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

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

Respectfully submitted,
Daniel Laroe, Staff Planner