

**City of Salem Board of Appeals  
Meeting Minutes  
Wednesday, June 18, 2014**

A meeting of the Salem Board of Appeals (“Salem BOA”) was held on Wednesday, June 18, 2014 in the third floor conference room at 120 Washington Street, Salem, Massachusetts at 6:30 p.m.

**Ms. Curran calls the meeting to order at 6:37 p.m.**

**ROLL CALL**

Those present were: Rebecca Curran (Chair), Richard Dionne, Tom Watkins, and Peter A. Copelas (Alternate). Also present were Thomas St. Pierre, Building Commissioner, and Dana Menon, Staff Planner.

Ms. Curran advises those present that there are only four Board members here tonight, so any approval will require an affirmative vote from all four members present. Applicants have the option to request to continue to the next meeting, so that their petition may be heard with more Board members present.

**APPROVAL OF MEETING MINUTES**

**May 15, 2014 Draft Meeting Minutes**

**Motion and Vote: Mr. Copelas moves to approve the minutes as written, seconded by Mr. Dionne. The vote was unanimous with three (3) in favor (Mr. Copelas, Mr. Watkins, and Mr. Dionne) and none (0) opposed. Ms. Curran abstained, as she was not present at the May 15<sup>th</sup> meeting.**

**REGULAR AGENDA**

Project: Continuation of the petition requesting a Special Permit per Sec. 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance to construct an addition at the rear of the existing nonconforming structure.

Applicant: **RAYNALDO DOMINGUEZ**

Location: **38 CABOT STREET (R2 Zoning District)**

Documents & Exhibitions:

- Application date-stamped April 22, 2014 and accompanying materials
- ”Proposed Kitchen Addition” plan and photo, submitted 6/18/2014

Mr. Raynaldo Dominguez states that he only received the drawings he requested from the contractor at 5am this morning. He doesn’t believe that the drawings he received are going to be adequate for the Board’s review.

Ms. Curran recommends submitting what he has, and if he wants to continue to the next meeting, he can request that. She notes that the Board hasn’t seen the drawings yet.

The applicant distributes the additional drawings (“Proposed Kitchen Addition”).

Mr. St. Pierre recommends that the applicant requests to continue, as the drawings are difficult to interpret. Ms. Curran recommends that Mr. Dominguez follow up with the Building Inspector before the next meeting, and that Mr. Dominguez submit the required drawings and plans to the Board one week prior to the meeting.

Mr. Dominguez requests to continue to the July 16<sup>th</sup> meeting of the Board of Appeals.

Mr. Watkins motions to continue the hearing of the petition to July 16<sup>th</sup>, second by Mr. Copelas, all in favor – unanimous (4).

**Motion and Vote: Mr. Watkins makes a motion to approve the applicant’s request to continue to the July 16, 2014 Board of Appeals regularly scheduled meeting. The motion is seconded by Mr. Copelas. The vote was unanimous with four (4) in favor (Mr. Watkins, Mr. Dionne, Ms. Curran, and Mr. Copelas) and none (0) opposed.**



Project: Petition requesting a Special Permit per Sec. 3.2.5 *Swimming Pools* of the Salem Zoning Ordinance, to allow an above ground pool to be closer than the required six-foot minimum setback from the rear property line.  
Applicant: **LINDA RENNICKS**  
Location: **32 GALLOWS HILL ROAD (R1 Zoning District)**

Documents & Exhibitions:

- Application date-stamped May 8, 2014 and accompanying materials

Ms. Linda Rennicks presents the petition. Ms. Rennicks states that the new pool is in the same location as a previous pool, but it is larger.

Mr. Watkins clarifies which neighbors are objecting to Ms. Rennicks’ pool. It is established that the next door neighbor on Gables Circle has no issue with the pool, and that the neighbor on Gallows Hill Road has raised the issue of the pool being installed without a permit.

Ms. Curran opens the hearing to the public.

Doris Boghosian, 28 Gallows Hill Road: states that there is a spotlight in Ms. Rennicks’ back yard, in the pool area, that shines on her porch. Ms. Boghosian asks if there is a regulation that requires that pool use end by 11pm.

Ms. Curran and Mr. St. Pierre state that they are not aware of that time limit.

Ms. Rennicks states that the spotlight was installed 2-3 years ago. Ms. Boghosian states that there’s no shield on the light.

Mr. Richard Viselli, 31 Gallows Hill Road: states that he has lived across the street for many years, and has no complaints.

Ms. Curran asks if there are any more members of the public who wish to speak. None come forward.

Ms. Curran states that if the applicant were to install a new pool, it would be placed six feet off of the property line, per the requirements of the zoning ordinance. This is a small difference from the current location of the pool (currently 4.7 feet from the rear property line). If the pool was moved a foot, the pool would still be there. Ms. Curran raises the option of putting a special condition on the Board's approval, requiring a shield on the spotlight, or moving the spotlight, such that it doesn't shine on Ms. Boghosian's property.

Mr. Watkins states that there was a pool that had been there for a number of years, and the new pool would only need to be moved by a foot or so to be in compliance with the zoning ordinance, and that the issues with the light can be addressed in the Board's conditions. Mr. Watkins doesn't see anything that goes against the required findings for a Special Permit.

Ms. Rennicks asks about the 11pm issue. Mr. St. Pierre states that it's probably actually a reference to the noise ordinance.

Ms. Curran addresses the considerations for granting a Special Permit:

*Community needs which are served by the proposal* – it's an existing pool and will continue to be.

*Traffic flow and safety, including parking and loading* is not impacted.

*Adequacy of utilities and other public services* is not impacted

*Neighborhood character* – there's always been a pool there, and there will continue to be.

*Impacts on the natural environment including view* remains the same, as there was a pool there previously.

*Potential economic and fiscal impact, including impact on City services, tax base, and employment* – these are not impacted

**Motion and Vote:** Mr. Watkins makes a motion to close the public hearing, and to approve the application with 2 standard conditions and one special condition that the spotlight in the rear yard shall be shielded and directed away from 28 Gallows Hill Road. The motion is seconded by Mr. Dionne. A roll call vote is taken, and is unanimous with four (4) in favor (Mr. Watkins, Ms. Curran, Mr. Dionne, and Mr. Copelas) – and none (0) opposed. The decision is hereby incorporated as part of these minutes.

**Discussion:** Mr. St. Pierre will follow up to inspect the condition of the light.

Project: Petition seeking Variances from the provisions of Section 4.0 *Dimensional Requirements* of the Salem Zoning Ordinance, to allow less than the required 100-foot minimum lot frontage and less than the required 100-foot minimum lot width for two proposed lots. The proposed lots will take their frontage from a shared driveway off of Marlborough Road.

Applicant: **ANTHONY JERMYN & RICHARD JERMYN**

Location: **148 MARLBOROUGH RD (R1 Zoning District)**

Attorney Correnti requests to submit his request to continue, out of order of the Agenda.

**Motion and Vote: Mr. Watkins makes a motion to approve the applicant's request to continue to the July 16, 2014 Board of Appeals regularly scheduled meeting. The motion is seconded by Mr. Dionne. The vote was unanimous with four (4) in favor (Mr. Watkins, Mr. Dionne, Ms. Curran, and Mr. Copelas) and none (0) opposed.**

Project: Petition requesting a Variance per Sec. 3.3.4 *Variance Required* and a Special Permit per Section 3.3.3 *Nonconforming Structures* of the Salem Zoning Ordinance, to allow an addition to the rear of the existing nonconforming building to accommodate an additional garage bay.

Applicant: **EVANGELOS FRANGIAS**

Location: **119 BOSTON STREET (B2 Zoning District)**

Documents & Exhibitions:

- Application date-stamped May 23, 2014 and accompanying materials

Mr. Copelas – states that he is an abutter to property that Mr. Frangias owns, and states that with the applicant's consent, he will stay at the hearing. The applicant states his consent.

Attorney Atkins presents the petition. He states that Angelo Frangias operates the service station in question. Mr. Atkins states that these are not new Variance requests, they are extensions of the existing building - extending the existing rear setback line of the building. There is a rear retaining wall at the back of the property, as the rear abutting parcel rises substantially up from 119 Boston Street. Mr. Atkins emphasizes that the requested relief is not for a new nonconformity – the “L” of the existing building is already within the required setback. This proposal for the petition would increase the lot coverage from 26% to 32%, including the canopy. It is already nonconforming. The original service station was built in 1958. A subsequent owner expanded the garage in 1980 by a Special Permit, and in 1988 the canopy over the pump area was approved. The key factor in issuing the Special Permit is that there not be substantially more detriment to the neighborhood. In this case, more vehicles will be able to be put inside the building. The current area is empty, and the applicant will improve the rear retaining wall. The use will not be much different from what it is today. Contemporary vehicles require more equipment for repair than vehicles used to, and Mr. Frangias needs an additional bay for repairs. This is a neighborhood business, and has been there a long time. The Variance for a rear yard setback just continues the existing nonconforming setback. This is an irregularly shaped lot, with some extreme topography in the rear. Hardship is related to not being able to reasonably use the property. This is a reasonable extension of the service station. This is a B2 district, and a service station is an allowed use in this district. This is just a dimensional question in regards to rear yard setback and percentage of coverage.

Ms. Curran – it looks like the addition is 17 feet high, and the existing building is 14 feet high. What's currently behind the property?

Mr. St. Pierre states that the rear retaining wall is approximately 6-7 feet tall, and the land beyond it slopes up to Butler Street.

Atty. Atkins states that the lot is a rather small lot.

Mr. Copelas asks about the sale of used cars on the property. Atty Atkins replies that a license was approved in an earlier special permit on the property, and that the sale of used cars will not be discontinued. Mr. Copelas states that the proposed addition is where the used cars are currently located. Atty. Atkins replies that there is still 52 feet by the proposed bay for used car parking. Mr. Frangias states that he is currently licensed for 5 used cars.

*Ms. Curran opens the hearing to the public.*

Marietta Goodridge, 115 Boston Street – owns the property behind the garage. Ms. Goodridge asks about the height of the new retaining wall. Atty Atkins replies that the existing wall is seven feet high, and the proposed replacement wall will be nine feet high.

*Hearing no more public comment, Mr. Watkins motions to close the public hearing. The motion is seconded by Mr. Copelas. The vote was unanimous with four (4) in favor and none (0) opposed.*

Ms. Curran states that the addition makes the most sense in the area it's proposed. It's infilling an existing building, and the location of the addition is owing to the geometry of the existing building. If they tried to construct the addition in another location, it would impede the workings of the rest of the property.

Mr. Watkins states that he is OK with the proposal, Mr. Dionne states that it is a sensible use of the building.

Atty. Atkins states that the hardship is the irregular shape of the property, and the topography at the rear of the property, which requires a retaining wall.

Ms. Curran adds that the circumstance and location of the building itself is unique, and creates a hardship. Literal enforcement of the provisions of the ordinance would involve a substantial hardship to the applicant. Desirable relief may be granted without substantial detriment to the public good, and without nullifying or substantially derogating from the intent of the zoning district. It is just an expansion of an existing use.

**Motion and Vote: Mr. Watkins makes a motion to approve the requested Variance and Special Permit, with 8 standard conditions. The motion is seconded by Mr. Dionne. The vote was unanimous with four (4) in favor (Mr. Watkins, Mr. Dionne, Ms. Curran, and Mr. Copelas) and none (0) opposed.**

**Project:** Petition appealing the decision of the Building Commissioner that the property is currently in use as a Rooming, Boarding or Lodging House as defined in the Salem Zoning Ordinance. Should the appeal of the decision of

the Building Commissioner be unsuccessful, the petitioners seek a Special Permit per Section 3 *Table of Principal and Accessory Use Regulations* of the Salem Zoning Ordinance, to allow the use of the property as a Rooming, Boarding or Lodging House.

**Applicant: GEORGE & JODI BRADBURY**

**Location: 102 DERBY STREET (B1 Zoning District)**

Documents & Exhibitions:

- Application date-stamped May 28, 2014 and accompanying materials
- “Petition of Support” submitted to the Board

Atty. George Atkins presents the petition.

Atty. Atkins submits to the Board a signed petition in support of the application. Atty. Atkins explains that he does not believe that the use constitutes a “rooming, boarding, or lodging house” use. It’s a different sort of use that is not contemplated in the current ordinance. This type of short-term vacation rental is becoming more popular, and there are numerous locations in Salem offering this kind of rental. Atty. Atkins states that the definition of “Roomers and Boarders” does not apply here. The State Statute that governs lodging houses specifies letting to 4 or more persons, and the letting of an individual room, which is in some places is described as being less than 400 square feet. It may be that the City is interested in pursuing some questions, or an ordinance amendment, around this particular use, but it’s not currently addressed in the zoning ordinance. Section 40A prohibits the regulation of the use of the interior of a single family home.

Ms. Curran states that if you have an apartment or a house, the City doesn’t get involved in the length of the rental term for residential units. With weekly or vacation rentals, there could be other issues that come up, but I don’t think it meets the definition of “rooming, boarding or lodging house” in the zoning code. If the City wants to regulate that, because it’s something that happening more and more, the City may want to look at that. Right now my thinking is to overturn the decision of the Building Inspector.

Mr. Copelas – agrees that it doesn’t appear to fall under the definition of a “rooming, boarding or lodging house” in the Salem Zoning Code. There does seem to be space for some new regulations. It seems more akin to a bed and breakfast type use, and that would entail taxes, etc. But the narrow definition of the use as a lodging house doesn’t seem to be the correct interpretation of the current use of the property. Perhaps a new ordinance could be investigated, but that’s beyond this Board’s purview.

Ms. Curran reads the petition in support of the appeal, submitted by Atty. Atkins to the Board at the meeting, signed by four (4) individuals.

Ms. Curran reads the following letters into the record:

- Charles Ouimet, 109 Derby Street, describing a late-night disturbance related to renters at 102 Derby Street.
- Mr. David Bowie, 14 Beach Ave., in support of the petition, stating a benefit to local businesses.

- Emily Swilling, 105F Derby Street, in opposition to the petition, stating a concern about a change in the character of the neighborhood.
- Kennan Abbate, 105R Derby Street, in opposition to the petition, stating a concern about parking and the establishment of a precedent for rentals in neighborhoods.
- Barbara Matteau, 43 Union St #2, in support of the petition. Long-term residents of a residential unit have more cars than the short-term rentals. There are other uses permitted in a B1 that would be more detrimental than a vacation rental.
- Dawna Bucco, 74 Webb Street, in support of the petition.
- Ms. Karen Scalia, Salem Food Tours, in support of the petition.
- Christine Langill and Michele Cormier, 4 Blaney Street Unit 5, in support of the petition.

*Ms. Curran opens the hearing to the public.*

Heidi Milman, 109 Derby Street – has lived in the neighborhood for 31 years, and the character of the neighborhood has been fine. The applicants originally told Ms. Milman that the second unit would be used by family members. The applicants never told the neighbors what they were doing with the property until the neighbors received notice of the hearing. We need more affordable housing in Salem. This is not affordable housing. We have no idea who could be there. You don't screen people before they stay there. This will affect City-wide affordable housing if you allow this to go through.

Patrick McCormack, 105 Rear Derby Street, states that he wasn't aware of the gray area of the definition of the word "lodging". It's a B1 business district, so I assume it is in fact a business. I assume the City would require a business license to operate a business. As a business, it has to fall into some category, it can't fall into some hole as if it doesn't exist. The renters take up parking spaces on the street. In this instance, it hasn't been inspected for fire code for guest habitation.

George Bradbury, owner & petitioner, 102 Derby Street – parking is a premium in that area. About half of our guests don't have a car, they travel by ferry or train to the area. A lot of the guests are actually family members of other neighbors. Parking is not being used continuously. We do screen our guests before they arrive. We also live there, so we can monitor noise. We want our house to stay beautiful. We are proud of our neighborhood, and we want it to stay beautiful. We also use part of the property for family members staying for short periods of time. I wasn't trying to hide this from anyone, it's listed online, I've talked to neighbors about it. There's a retail store right next door, and the rentals are beneficial to that business.

Ms. Heather Ahearn, 17 Messervy Street, speaks in support of the petition.

Atty. Atkins – perhaps if regulation needs to be contemplated, it should go to City Council, but the zoning code doesn't apply at this time to this situation.

Ms. Curran –I would be in favor of overturning this because I don't think it meets the definition of a rooming house. However, there could be issues such as parking, fire safety,

room tax, etc., so the City Council might want to consider doing something. It's a growing trend, and might deserve some further study.

Mr. St. Pierre states that this is becoming a common use in Salem, and that there would need to be regulation of this kind of use. It will be taken up by the City in the future.

Mr. Watkins states that he agrees there are further considerations such as tax and fire regulations, that aren't before the Board tonight. He agrees that the current use of the applicant doesn't meet the definition in the local bylaws and the state statute. Mr. Watkins is in favor of overturning the decision of the Building Inspector.

**Motion and Vote: Mr. Watkins makes a motion to overturn the decision of the Building Inspector, upholding the appeal of the petitioner. The motion is seconded by Mr. Copelas. The vote was unanimous with four (4) in favor (Mr. Watkins, Mr. Dionne, Ms. Curran, and Mr. Copelas) and none (0) opposed.**

#### **OLD/NEW BUSINESS**

Mr. Watkins inquires about the status of the appeal on the "chicken case."

#### **ADJOURNMENT**

Mr. Watkins motioned for adjournment of the June 18, 2014 regular meeting of the Salem Board of Appeals at 8:00pm.

**Motion and Vote: Mr. Watkins made a motion to adjourn the June 18, 2014 regular meeting of the Salem Board of Appeals, seconded by Mr. Dionne, and the vote is unanimous with four (4) in favor (Ms. Curran, Mr. Watkins, Mr. Dionne, and Mr. Copelas) and none (0) opposed.**

*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:*  
[http://salem.com/Pages/SalemMA\\_ZoningAppealsMin/](http://salem.com/Pages/SalemMA_ZoningAppealsMin/)

Respectfully submitted,  
Dana Menon, Staff Planner

Approved by the Board of Appeals 7/16/2014