

**City of Salem Board of Appeals
Meeting Minutes
Wednesday, July 16, 2014**

A meeting of the Salem Board of Appeals (“Salem BOA”) was held on Wednesday, July 16, 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 6:33 p.m.

ROLL CALL

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

APPROVAL OF MEETING MINUTES

June 18, 2014 Draft Meeting Minutes

Motion and Vote: Mr. Watkins moves to approve the minutes as written, seconded by Mr. Duffy. The vote was unanimous with four (4) in favor (Mr. Copelas, Mr. Watkins, Mr. Duffy, and Ms. Curran) and none (0) opposed.

REGULAR AGENDA

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.

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:

- Letter from the applicant dated July 1, 2014, requesting to continue the hearing to the next board hearing on August 20, 2014.

Motion and Vote: Mr. Copelas makes a motion to approve the applicant’s request to continue to the August 20, 2014 Board of Appeals regularly scheduled meeting. The motion is seconded by Mr. Duffy. The vote was unanimous with four (4) in favor (Mr. Watkins, Mr. Duffy, Ms. Curran, and Mr. Copelas) and none (0) opposed.

Project: Continuation of the 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)**

Documents & Exhibitions:

- Application date-stamped May 28, 2014 and accompanying materials
 - Colored lot plan, submitted to the Board at the meeting
 - 2 letters of support from abutters – 144 Marlborough Road and 138 Marlborough Road

Atty. Correnti presents the petition, stating that the applicants grew up in the house adjacent to the property, fronting on Marlborough Road. This property (148 Marlborough Road) has been vacant. The two applicants are now the owners of 148 Marlborough Road. The lot has access out to Marlborough Road only by a small driveway. As the zone is R1, the only thing they can really do with the land is single-family dwellings. They're looking at two approximately 25,000 square-foot lots. In R1 the minimum lot area is 15,000 square feet. They are asking for variances to lot frontage and lot width. Attorney Correnti presents a lot plan with the existing single lot split into two proposed lots, which are colored in two different colors (red and blue). The existing single lot has 10 feet of frontage on Marlborough Road, and the existing lot width is 14 feet. The zoning code requires a minimum drive width of 12 feet for minimal daytime driveway use, which is typical for single-family residences. To get the 12 foot drive, 2 feet of Lot 250B (146 Marlborough Road) would be put into an access and utility easement. This lot is very unique, certainly to the neighborhood. Without this approval, the question is "what would they do with this land?" - given that it's in an R1 neighborhood? Mr. Jermyn has reached out to the neighbors. If we can't put two single-family homes on it, it would be very difficult to do anything else. We understand this isn't a typical petition.

Ms. Curran reads two letters of support submitted by the applicant, signed by Jean Geary at 138 Marlborough Road and Joseph Fratangelo at 144 Marlborough Road.

Ms. Curran opens the hearing for public comment.

Kenneth Wilson, 150 Marlborough Road – had some immediate concerns when he originally saw the plans. Mr. Jermyn has alleviated his concerns by moving the driveway slightly off his property line. Now he supports the petition, and thinks it would raise his property value.

Mr. Copelas asks what the situation is at 146 Marlborough Road. Mr. Jermyn states that it is currently unoccupied. Ms. Curran asks if it has merged with the large empty lot. Atty. Correnti states that they have not, as the lots are under different ownership, under 2

different trusts. Atty. Correnti clarifies that the applicants now own the vacant lot – when they filed the application, they were only under agreement for ownership of the land.

Ms. Curran states that she does think this lot is unique in that it's a very large lot with very little frontage. She adds that she thinks that the applicant could make 146 Marlborough a conforming lot by reconfiguring it with the vacant parcel. Ms. Curran states that there are special circumstances relating to this lot, and that the petition would not negatively impact the neighborhood, or detract from the intent of the ordinance. Ms. Curran states that she'd like to have a condition that the Fire Chief sign off on the adequacy of the driveway access.

Mr. Copelas states that this lot is the definition of a pork-chop lot, and he's having a hard time understanding why we should overrule our zoning ordinances for this. Atty. Correnti replies that Mr. Copelas is correct – this is what can be called a “porkchop lot”. Salem's zoning has variance provisions, and this is a textbook case for a variance request. The City isn't going to want to see lots like this everywhere, but this lot is unique. I haven't seen anything like this in my practice. The Board isn't setting a precedent or amending a zoning ordinance. The Variance provisions allow for deviations in certain circumstances. We have lots that conform to the zoning requirements for lot size, and we're putting two single-family homes in an R1 neighborhood.

Mr. Copelas asks Atty. Correnti to address Ms. Curran's point that there's adequate square footage to bring 146 Marlborough Road into compliance with zoning. It would be a positive thing to bring that lot into compliance. Even if you reconfigured the lots, you'd still wind up with 3 houses on these lots, and this approach seems more appropriate. Atty. Correnti states that several approaches were considered, such as demolishing 146 Marlborough, or putting in a cul-de-sac, which would have involved 3 or more houses. Mr. Copelas asks Ms. Curran to clarify her comment that the proposed plan is preferable to other alternatives. Ms. Curran replies that if they put in a cul-de-sac, it would be a lot of pavement. There are wetland/drainage issues in this area. It seems like overkill to put in all of that right-of-way and cul-de-sac area, to access only 2 houses. If they were asking for more houses than they could do as a matter-of-right (meeting the minimum lot size requirements of the zoning code), that would be a different matter. This is a long-standing lot, they're not creating a *new* “porkchop” lot. Atty. Correnti agrees that this is a different situation than someone coming in and creating this situation – this is a situation that has been inherited. Mr. Copelas states that he isn't convinced that there isn't a better way to configure the two lots (146 and 148 Marlborough Road). Atty. Correnti states that if they need to take more time to present additional considerations, they'd consider asking for a continuance. Mr. Copelas states that perhaps the situation could be mitigated, if the lot on the street was included in the proposal. While the lots are technically under two different trusts, they are basically under the same ownership. Mr. Anthony Jermyn stated that there had also been some city work through the lot, to allow an easement for drainage. We had no problem letting the City come through that property, to correct problems at an abutting property.

Atty. Correnti asks to continue the hearing to the August 20th meeting.

Motion and Vote: Mr. Duffy makes a motion to approve the applicant's request to continue to the next Board of Appeals regularly scheduled meeting. The motion is

seconded by Mr. Watkins. The vote was unanimous with four (4) in favor (Mr. Watkins, Mr. Duffy, Ms. Curran, and Mr. Copelas) and none (0) opposed.

Project: Petition seeking a special permit per Sec. 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance, to allow the addition of a second floor deck onto an existing nonconforming single-family residence.

Applicant: **NICK MOSHER**

Location: **462 LAFAYETTE STREET (R1 Zoning District)**

Documents & Exhibitions:

- Application date-stamped June 19, 2014 and accompanying materials

Mr. Michael Shapiro presents the petition on behalf of the applicant. He states that as the existing building is nonconforming, they must seek a Special Permit to put a deck on the house. The means of entry would be located where the existing window is now – it would become a door. A second means of egress to the rear yard would also be added to the deck. The deck would cantilever out over the front of the existing garage, supported on two footings in the front. The rear stairs would be supported by a rear footing.

Ms. Curran clarifies the footprint of the proposed deck relative to the existing garage. Ms. Curran asks why the deck is overhanging the garage, not just over the garage area. Mr. Shapiro states that the location of the proposed door, at the existing window, would be right at the end of the deck if the deck ended at the edge of the garage.

Mr. Copelas asks the applicant to confirm that there wouldn't be any effective change to the existing front and side setbacks. Mr. Shapiro confirms this. Mr. St. Pierre adds that it actually will encroach a few additional inches on the side yard setback, due to the angle of the existing house and garage structure relative to the property line. The side of the garage is 3 feet from the side lot line at the closest point. With the extended part of the deck (cantilevered part), the end of the deck would be 2.5 feet from the side lot line.

Ms. Curran opens the hearing for public comment. No comment is heard.

Ms. Curran doesn't see any problems with the proposal, but is trying to get an idea of the aesthetic impact of the deck. Mr. St. Pierre likens it to a house on the road to Winter Island that has a similar deck, which Ms. Curran recognizes.

Mr. Duffy states that there aren't any social, economic, or community issues that are really in play for this proposal. Traffic, parking, utilities, impacts on natural environment or drainage, are not impacted. There isn't any strong concern about the aesthetics, but anecdotally we've heard this sort of thing exists elsewhere, so it would be in keeping with the neighborhood. There is no fiscal or economic impact. This would not derogate from the intent or purpose of the zoning ordinance.

Motion and Vote: Mr. Duffy makes a motion to approve the requested Special Permit, with 7 standard conditions. The motion is seconded by Mr. Copelas. The

vote was unanimous with four (4) in favor (Mr. Watkins, Mr. Duffy, Ms. Curran, and Mr. Copelas) and none (0) opposed.

Project: Petition seeking Variances from the requirements for maximum lot coverage of all buildings, minimum width of side yard, and minimum depth of rear yard of Sec. 4.1.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance, to allow the construction of a 38-foot by 25-foot garage.

Applicant: **JOHN KONTARASIS**

Location: **7 OSBORNE STREET (R2 Zoning District)**

Documents & Exhibitions:

- Application date-stamped June 18, 2014 and accompanying materials

Mr. John Kontarasis presents the petition. There's an existing foundation in the proposed location, and he wants to re-use the existing foundation. Also, when he moved in three years ago, someone robbed his truck of \$4,000 worth of equipment, a garage would keep his vehicles safe. His grandparents took down the old garage in 1959.

Ms. Curran clarifies that the large size is because the applicant wants to re-use an existing foundation. Mr. Copelas asks what's currently there. Mr. Kontarasis states that the foundation and footings of the previous garage are still there. Ms. Curran asks who would be using the garage. Mr. Kontarasis replies that it's a two-family building, and his tenant would have a parking space in the garage.

Ms. Curran opens the hearing to the public.

Dan Hanscom, 5 Osborne Street. Speaks in favor of the petition.

Ms. Curran asks if Mr. St. Pierre has looked at the foundation. Mr. St. Pierre states that he has not.

Mr. Watkins asks if the Board could condition that the Building Inspector confirm that the existing garage foundation is in good enough condition to rebuild on. Ms. Curran confirms that this could be a special condition. If the existing foundation were not useable, the petitioner would have to come back before the Board.

Ms. Curran and Mr. Copelas state that the submitted written statement does not provide a statement of hardship. Mr. Copelas adds that this seems to be a convenience rather than a hardship. Mr. Watkins asks if it might be considered a financial hardship. It's a good project overall, but there needs to be a hardship. Ms. Curran states that she isn't sure that something smaller couldn't be done, using the existing foundation. Mr. St. Pierre asks if the hardship could simply be the existing size of the lot and the size of the existing foundation.

Mr. Kontarasis states that the size of the lot and the location and size of the existing foundation is the hardship.

Mr. Copelas points out that any garage at all would exceed the requirements for maximum lot coverage, but this one does seem rather large.

Ms. Curran asks the petitioner to describe the construction materials. The applicant states that it will be 2x4 construction with vinyl siding and an asphalt roof.

Mr. St. Pierre asks what's behind the garage. The petitioner states that the rear property has a rear yard, maybe 45 to 50 feet deep.

Mr. Duffy states that if this were a smaller garage design, we'd still be considering the same question. Ms. Curran replies that a smaller garage would be requiring less relief. Mr. Duffy states that the hardship, as the petitioner stated, is the existing lot size and the fact that there's an existing foundation that's not currently in use.

Ms. Curran asks about the 3-car capacity, with only 2 garage doors. The applicant states that a third car could be maneuvered into the garage through the 2 doors.

Mr. Copelas asks about the petitioner's statement in his application stating that it's a 2-car garage. Mr. Copelas clarifies that he means 2 bays. Mr. St. Pierre adds that having only 2 doors looks less industrial than 3 doors, or one larger door.

Ms. Curran agrees that the hardship is that the foundation is there, as long as there is a condition that the existing foundation has to be used.

Motion and Vote: Mr. Watkins makes a motion to approve the requested Variance, with 8 standard conditions, and two special conditions: that the current foundation be inspected by the Building Inspector to ensure that it's sound enough to building upon - if it is not, the applicant will have to come back before the Board to seek another variance with new plans; and that the garage remain as an accessory use to the primary residence and not a business. The motion is seconded by Mr. Duffy. The vote was unanimous with four (4) in favor (Mr. Watkins, Mr. Duffy, Ms. Curran, and Mr. Copelas) and none (0) opposed.

Project: Petition seeking a Special Permit per Section 3.3.3 *Nonconforming Structures* and a Variance from the maximum height of buildings in stories requirement of Section 4.1.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance, to allow the extension of an existing nonconforming structure for the addition of a shed dormer.

Applicant: **JOHN ESPINOLA**

Location: **28 TREMONT STREET (R1 Zoning District).**

Documents & Exhibitions:

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

Ms. Brigitte Fortin, architect, presents the petition on behalf of the petitioner. It is an existing home, which Mr. Espinola has owned since the 1970s. The applicant wishes to

renovate the 3rd floor, which requires the addition of a 2nd egress to the 3rd floor. Ms. Fortin illustrates on the plan the proposed additions to accommodate the required egress and a shed-dormer to provide more useable space in the 3rd unit.

Ms. Curran asks if the proposed roof extension will have the same pitch as the existing roof. Ms. Fortin confirms that it will.

Mr. St. Pierre states that this came about through some building code enforcement we went through. The building has been a 3 family for a long time – it's a legally grandfathered nonconforming use. The applicant has been very cooperative throughout the process.

Ms. Lori Hrdy, 9 Japonica Street, states that she has lived there for 9 years. Ms. Hrdy distributes photos, and expresses her concerns. The proposed shed dormer would tower over her property. The porch that's there right now is a nuisance – there are folks gathering out there. An additional concern is that the owner put down a paved driveway right against Ms. Hrdy's property. The tenants park there in the rear, and their headlights shine into her home. She has spoken with Mr. Espinola about putting a six-foot high opaque fence on the property line, to prevent the tenant's headlights from shining into her home, and prevent the tenants from shoveling snow into her driveway.

Ms. Curran asks Ms. Fortin to clarify the deck work. Ms. Fortin confirms that they will be rebuilding the existing deck, it would look nicer than it does right now.

Ms. Curran asks if Mr. Espinola would agree to put a fence in the back. Mr. Espinola agrees to that condition.

Ms. Hrdy asks if there can be a timeline for installation of the fence, and a timeline for the demolition and construction, and removal of the demolition debris dumpster, to take place. Ms. Curran asks about the construction schedule. Ms. Fortin states that the contractor is on vacation currently. Mr. Espinola states that he would like to complete work before the winter. Ms. Curran states that the Board could condition that the dumpster could not be on-site until work begins, and that work has to proceed continuously until it's finished.

Ms. Curran states that the proposal is not increasing the footprint of the existing structure.

Ms. Fortin states that the hardship is that if they cannot build the dormer, the applicant would lose a room, and would lose income.

Ms. Curran states that if the egress is required, the egress would have to go somewhere – anywhere you put it, it would require a variance. Regarding the special permit – there wouldn't be any negative impact on the points of findings. Rebuilding the deck would have a positive impact. The installation of a fence would be an improvement for the neighbors. The existing siding is vinyl, and the addition would also be vinyl.

Ms. Hrdy states that she'd like to make sure that there are no improvements/accommodations for people to go out onto the roof over the deck. The Board clarifies that that use is not proposed, and if the applicant wanted to install a deck there, they would have to come back before the Board.

Motion and Vote: Mr. Duffy makes a motion to approve the requested Variance and Special Permit, with 8 standard conditions, and two special conditions: a six-foot high stockade fence shall be installed on the rear property line before construction of the additions are complete, and that a construction debris dumpster shall be on site during construction, that construction shall proceed continuously, and that the dumpster shall be removed as soon as is practical after completion of construction. The motion is seconded by Mr. Watkins. The vote was unanimous with four (4) in favor (Mr. Watkins, Mr. Duffy, Ms. Curran, and Mr. Copelas) and none (0) opposed.

Project: Petition requesting a Special Permit per Section 3.3.4 of the Salem Zoning Ordinance to allow the extension of an exterior wall along an existing nonconforming distance within a required side yard, in order to construct a second story addition.
Applicant: **BRIDGET K. PAGE**
Location: **65 TREMONT STREET (R2 Zoning District)**

Documents & Exhibitions:

- Application date-stamped June 24, 2014 and accompanying materials

Ms. Veronica Hobson presents the application on behalf of the petitioner. Ms. Hobson describes the petition, with the submitted plans. The addition is at the rear of the house, so it's not visible from the street. The houses on either side are currently unoccupied – they're on the market, so there weren't any neighbors we were able to approach.

Ms. Curran asks how many square feet are being added. Ms. Hobson states that it's approximately 140-150 square feet. Ms. Curran clarifies that the proposed addition is entirely within the existing footprint. Ms. Hobson confirms that it is, except for 2 feet that will cantilever over the existing first floor.

Ms. Curran opens the hearing to the public. No comment is heard.

Ms. Curran states that she has no problem with this – it's very attractive. The drawings are very clear. The community needs, traffic flow, utilities, and impact on natural environment aren't changing. It improves the neighborhood character, and it is an improvement to the property so it will have a positive impact on the City's financial base.

Mr. Duffy agrees with Ms. Curran's findings, and adds that the proposal is just extending an existing nonconforming setback, it isn't encroaching any further on the required setbacks.

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

Project: Petition requesting a Special Permit per Section 3.3.3 *Nonconforming Structures* of the Salem Zoning Ordinance, to allow the addition of a roof deck to an existing nonconforming three-family residential building.

Applicant: **NICK OSGOOD**

Location: **4 BENTLEY STREET (R2 Zoning District)**

Documents & Exhibitions:

- Application date-stamped June 25, 2014 and accompanying materials
 - Petition in opposition to the application, submitted to the Board by Ms. Moustakis, 2 Bentley Street.
 - Statement by Ms. Moustakis, read at the hearing
 - Police record submitted by Ms. Moustakis
 - Photos of previous exterior stairway submitted by Ms. Moustakis.

Mr. Nick Osgood presents the petition. Mr. Osgood describes the proposed roof deck. He states that the property does not meet required setbacks, which is common throughout the neighborhood. The proposed roofdeck is located at the rear of the structure, and is 10 feet from the north and west property lines, and about 18 feet from the east property line. Mr. Osgood bought the property in 1995 as a 3-family, and renovated it completely. In 2003, Mr. Osgood put the third-floor egress on the exterior of the building, obtaining the appropriate building permits. After it was completed, the neighbors objected to the stairway. After various legal proceedings, Mr. Osgood removed the exterior stairway. Mr. Osgood and his wife are scheduled to close on the 2nd unit on July 30th. If they close on that unit, they will put the egress back on the interior of the building, and proceed from there.

The petition before the Board today is to create outdoor space for the third floor unit, and to be in compliance as much as possible with current zoning. The first and second floor units both have outdoor areas. Mr. Osgood notes that in his submitted written statement, he has offered to install a privacy fence on the side abutting 2 Bentley Street.

Ms. Curran notes that this deck is staying on an existing roof, and not extending over the footprint. It will be just over 200 square feet, and will have a 3-foot high railing, and accessed from a door that already exists. Mr. Osgood clarifies that the door currently goes out to a roof. Ms. Curran confirms with Mr. St. Pierre that this structure is a pre-existing, grandfathered, nonconforming use.

Mr. Copelas asks if Mr. St. Pierre's understanding of the facts is consistent with the statements made tonight by the petitioner. Mr. St. Pierre states that it's accurate, except that the City was not aware of an existing interior 2nd egress at the time of the previous proceedings. But that is not pertinent to the petition before the Board today.

Ms. Curran opens the hearing to the public.

Ms. Linda Moustakis, 2 Bentley Street. Ms. Moustakis presents to the Board a petition in opposition to the petition, signed by 8 abutters. Ms. Curran reads the petition into the record. Ms. Curran also reads a letter in opposition submitted by Mr. Robert Wildey, 5 Daniels Street.

Ms. Moustakis submits a written statement in opposition to the application to the Board, and reads it aloud. It states that the proposed roof deck infringes on her privacy. The neighborhood is a National Register Historic District established by Congress and deserves protection from intrusive, non-historic development. A high fence surrounding the deck would not be an acceptable solution, as it would be unsightly. There is adequate grade-level space at 4 Bentley Street to allow for outdoor use, without having to install this roof deck. If someone were to have a grill on the roof deck, the houses are so close together that it would be a fire hazard. Ms. Moustakis reviews the legal history regarding the legality of the previously built (and removed) exterior stairway and the legality of the 3rd unit. This deck is replacing the stairway that Mr. Osgood previously had to remove. Ms. Moustakis submits a police report relating to past incidents.

Lauren Keller, 4 Bentley Street Unit 1, asks if Mr. Osgood has an occupancy permit for the 3rd floor. Mr. Osgood states that he doesn't, as there is no second form of egress. His wife is in negotiations to purchase the 2nd floor unit. Mr. Osgood suggests that some of the signatures on the petition submitted by Ms. Moustakis are not property owners, but tenants. Mr. Osgood states that there are also neighbors in support of his petition. The building was in terrible shape and was used by drug dealers when Mr. Osgood purchased it. He has renovated the building, and improved it and the neighborhood.

Mr. St. Pierre states that it is not legal to have a second egress that has to go through a separate unit. Mr. Osgood has indicated that he is going to bring in plans to the building department to create an interior second egress for the 3rd floor.

Ms. Keller asks if any deed regarding the sale of the 2nd floor has been changed. Currently Ms. Victoria Regan owns the 2nd floor.

Ms. Dionne, 49 Essex Street (2hr 6 mins). I deserve privacy too. Your deck will look right down on my back yard.

Caralee Osgood, 282 Derby Street Unit 3, The issue today is about the deck. The third floor unit only has about 750 square feet of space. We don't expect to own the 2nd and 3rd floor forever, but we certainly believe the deck will be a positive addition to the house. Any time you construct a deck, there are privacy issues. The questions today are will the 3rd floor deck enhance the building and the neighborhood for years to come.

Ms. Moustakis states that she does not trust the petitioner. The deck examples shown by the petitioner are mostly staircases to provide access to upper level apartments, they are not decks.

Ms. Dionne, 49 Essex Street – states that she doesn't like Mr. Schultz's deck (one of the examples submitted by Mr. Osgood), it infringes on her privacy.

Ms. Curran and Mr. St. Pierre state that the required side yard setbacks in this neighborhood are 10 feet. The applicant is looking to expand a nonconforming structure. Ms. Curran states that it's a tight area – the neighbors are close by.

Mr. Copelas states that the requirements to grant a Special Permit require the Board to find that the adverse impacts of the proposal will not outweigh the positive impacts of the proposal. In hearing the statements by abutters tonight, it's difficult to see that. The occupancy of the 3rd floor is dependent on the second egress, not the roofdeck. The adverse impacts clearly outweigh the positive impacts of the petition.

Ms. Curran concurs with Mr. Copelas' statement. Mr. Duffy adds that it sounds like the significant concerns are privacy, and a density-related fire safety issue. I don't know if those are problems that necessarily can be remedied – maybe they can be – but I don't think we've fleshed out any remedies.

Ms. Curran and Mr. St. Pierre clarify that Salem Fire Code prohibits grills on decks over the first floor. Ms. Curran reiterates that having a grill on the deck is illegal. Ms. Curran states that the addition of a privacy fence would make the deck more visually imposing. Mr. Osgood states that a 5-foot privacy fence would block sound and visual impacts. He offers to shorten the deck, to bring it further away from the rear property line.

Mr. Osgood states that the 3rd floor rental unit is a 1-bedroom unit with a gambrel roof, which limits useable living area.

Ms. Keller – as a unit-owner, I would be opposed to a walled-off privacy fence, as it would decrease the property value.

Mr. Duffy states that it's not clear that a privacy fence will be a solution acceptable to the residents and abutters.

Ms. Curran states that as far as the required findings for granting a Special Permit, the proposed change seems to be substantially more detrimental to the neighborhood. The other findings don't seem to be impacted.

Mr. St. Pierre adds that the other option is to withdraw the petition, as a negative finding by the Board would mean that the applicant can't come back before the Board for 2 years without a substantially different petition.

Mr. Duffy states that he thinks it's possible that there could be some way to resolve the neighbors' issues with some mitigation measures, but it doesn't seem that the neighbors and petitioner are prepared to move in that direction at this point.

Mr. Osgood states that he is open to making changes, but the objections do seem to be overwhelming. He doesn't agree with all of the arguments being made, but he understands the concerns. Mr. Osgood requests to withdraw the petition without prejudice.

Mr. Duffy makes a motion to approve the request to withdraw the petition without prejudice. The motion is seconded by Mr. Watkins seconds. The vote is unanimous with four (4) in favor (Ms. Curran, Mr. Duffy, Mr. Watkins, and Mr. Copelas), and none (0) opposed.

Project: Petition requesting a Special Permit per Section 3.3.4 of the Salem Zoning Ordinance, to allow a single-story addition and an exterior stairway to an existing nonconforming structure.
Applicant: **THOMAS & MARY DEMAKES**
Location: **22 WILLOW AVENUE (R1 Zoning District)**

Documents & Exhibitions:

- Application date-stamped June 25, 2014 and accompanying materials
 - Revised plans, showing an addition to the existing porch, which was previously proposed just to be enclosed.

Mr. Griffin presents the petition. Mr. Griffin submits revised plans, showing an addition to the existing porch, which was previously proposed just to be enclosed, not expanded. The new drawings show a 3'-6" expansion of the porch (58 square feet). The porch addition would not encroach on any of the required setbacks. The petitioners own all three units in the building, they occupy the first floor and rent out the upper 2 floors to friends and relatives.

Ms. Curran confirms that the proposed addition on the north-east side of the building is extending along the existing non-conforming side yard setback.

Ms. Curran opens the hearing to the public.

Yifon Chen, 16 Willow Avenue, Unit 3. Ms. Chen asks if it's just a first-floor addition. Mr. Griffin clarifies the additions for Ms. Chen.

Ms. Curran states that this seems to be a small change, and an improvement to the house. The requested relief is minimal, as they're following the existing side-yard setback. The submitted written statement addresses the required findings. Ms. Curran reads these aloud, and adds that the view of the water from the property is enhanced with the addition. The statement also concludes that the parking & traffic, adequacy of utilities all remain the same. The applicant states that the added runoff from the roof area will be directed with care. The finish will match the existing structure, and the project will improve the city's tax base.

Motion and Vote: Mr. Duffy makes a motion to approve the requested Special Permit with the additional approval of the proposal to enclose and extend the existing porch, per the plans submitted to the Board at the meeting, with 8 standard conditions. The motion is seconded by Mr. Copelas. The vote was unanimous with four (4) in favor (Mr. Watkins, Mr. Duffy, Ms. Curran, and Mr. Copelas) and none (0) opposed.

OLD/NEW BUSINESS

There is discussion regarding the possibility of rescheduling the August Board meeting, as there are several Board members that will not be able to attend the scheduled meeting on

August 20th. Mr. Copelas and Ms. Curran are available on the 27th, but are not available on the 20th. There should be 5 members able to attend on the 20th, as the past few Board meetings have only had 4 Board members in attendance, a bare quorum. If 5 members cannot attend on the 20th, and 5 Board members are available for the 27th, the meeting should be rescheduled for the 27th. Ms. Menon will contact Board members for their availability and coordinate any necessary rescheduling of the meeting.

ADJOURNMENT

Mr. Duffy motioned for adjournment of the July 16, 2014 regular meeting of the Salem Board of Appeals at 9:16 pm.

Motion and Vote: Mr. Duffy made a motion to adjourn the July 16, 2014 regular meeting of the Salem Board of Appeals, seconded by Mr. Watkins, and the vote is unanimous with four (4) in favor (Ms. Curran, Mr. Watkins, Mr. Duffy, 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/

Respectfully submitted,
Dana Menon, Staff Planner

Approved by the Board of Appeals 8/27/2014