

**Board of Building Appeals**  
**March 31, 2022**  
Minutes

A meeting of the Board of Building Appeals of the City of Salem, Virginia, was held on March 31, 2022, in the Community Room, Salem Civic Center, 1001 Roanoke Boulevard, Salem, Virginia, at 3:30 p.m. concerning the dilapidated structure on the property located at 17 7th Street in the City of Salem, Virginia.

The Board—John Hildebrand, Robert Fry, III, David Botts, Nathan Routt, and Joe Driscoll; presided together with Troy D. Loving, Building Official; Jim Guynn, City Attorney, and Krystal M. Graves, Secretary; and the following business was transacted:

It was noted that notice of such hearing was published in the March 17 and 24, 2022, issues of the Salem Times-Register, a newspaper published and having general circulation in the City of Salem.

Secretary Graves called the meeting to order.

Secretary Graves stated that the first item on the agenda is to elect a chair and noted that a chair is elected at the first meeting of the calendar year.

ON A MOTION MADE BY MEMBER DRISCOLL, SECONDED BY MEMBER FRYE AND DULY CARRIED, Nathan Routt was elected chairman – the roll call vote: all – aye.

Secretary Graves asked that everyone who planned to speak at the hearing to rise, and she administered the oath.

Secretary Graves stated that the first item on the agenda to be heard is 17 7<sup>th</sup> Street.

Lew McClung, 1486 Hollybrook Road, Salem, requested to record the meeting due to having new hearing aides and not being able to write very fast.

Member Botts requested that everyone speak in a loud, clear voice as a couple of the Board members also have hearing problems.

Troy Loving, Building Official of the City of Salem, stated that it is his opinion the building located at 17 East 7<sup>th</sup> Street is in violation 18-38 of the City of Salem ordinance; the documents in the packet show the deterioration of the structure and the numerous conversations that have been had with the property owners about resolving the issues. The property owners have failed to produce any documents explaining that the building will be brought into compliance and that it is safe. He is bringing the matter to the Board in hopes that the City can get some resolution in this matter.

Chair Routt asked for speakers and for the speakers to state their name and address for the record.

Lew McClung, 1486 Hollybrook Road, Salem, member of the LLC and ownership of the building, appeared before the Board and stated that there is an interested party in the purchase of the property who is currently exploring the demolition of the building; the person has gone so far as asking demolition contractors for pricing and for hazardous waste disposal and removal. He asked the Board for 60 more days to bring a contract or some progress on that front. He stated the goal of that would be to demolition, which would be commiserate with the desires of the Board.

Chair Routt asked if there were any other speakers. No one stepped forward and he questioned if the other owners wanted to speak.

David McClung stated that they were waiting for the Board to make a decision on what they asked.

Member Driscoll stated that will come at the end.

Chair Routt stated that a decision will come at the end, but if the other owners want to speak, they can say their thoughts at this point.

Member Botts stated that the Board will discuss their request after they hear from all of the speakers.

Lew McClung questioned if the Board is opposed to his request, will the hearing continue.

Member Botts stated that the meeting would continue.

Member Driscoll questioned Mr. McClung about an email on October 25, 2021, between he and Mr. Loving where Mr. Loving had requested information from his architect or engineer regarding this code section and the building at 17 East 7<sup>th</sup> Street. In the email Mr. McClung apologized for the late response, so on and so forth; the discussion with the architect, who Mr. McClung said he had already enlisted, was waiting to get some stuff together. Member Driscoll stated that this was back in October 2021—five months ago; and inquired if he has been unable to put together the necessary stuff to do what needs to be done in five months.

Mr. McClung stated that “he” is a “she” and they have dismissed her as the architect, so the real question today he feels is would the Board allow them another 60 or 90 days to produce a contract that has an end goal of the demolition of this building, which would, he feels, would remove the need for an architect.

Member Driscoll questioned when the architect was dismissed.

Mr. McClung stated that he does not remember the exact date.

Member Driscoll stated that nothing has taken place since October other than releasing the architect.

Mr. McClung stated that he doesn't feel that is true, but nothing that he has affidavits of or have subjects present to testify.

Member Driscoll questioned if Mr. Loving has received any documentation or notification of anything.

Mr. Loving stated that he has not received anything.

Chair Routt asked if any other person(s) would like to speak.

Tom McClung, 1500 Hollybrook Road, Salem, appeared before the Board and stated that he sent a note to Mr. Loving; he hand delivered it as a matter of fact to Mr. Loving's office, stating that they had an interest from the City itself in the building, which we believe put things on hold and his actions, not having heard anything from him, would underscore that. He stated that he asked for an additional time period and Mr. Loving's response was the form of this hearing. He stated that he did make a request for an extension that was apparently denied.

Chair Routt again asked if any other person(s) would like to speak.

Lew McClung, again appeared before the Board and stated that the real matter before the Board is to accept or deny his request that they have a potential purchase pending and they are working to negotiate a contract. He stated that it sounds like the Board will exclude testimony from them in the future. If the Board agrees to the request, then there will not be a need for anyone else to bring up any points about the property. If the request is deemed not reasonable, then he asked that they have an opportunity to discuss points on the property.

Chair Routt asked for guidance.

Secretary Graves stated that typically a public hearing is held, and the Board hears from everyone who wants to speak. The public hearing is then closed, and that is when the Board would discuss and make a motion.

Chair Routt stated that the Board will hear from anyone who wants to speak regardless of what the decision will be. After all speakers have been heard, the Board will make a decision.

Mr. Lew McClung requested if an adjournment could be made long enough to make that decision and reconvene after a decision has been made. He asked the City Attorney if that was allowed by the Code.

The City Attorney stated that given Roberts Rules of Order, it would be the chairman's prerogative in that regard.

Mr. McClung questioned Member Fry if it would be reasonable to adjourn and reconvene.

Secretary Graves noted that Mr. Routt is the chair.

Mr. McClung apologized.

Chair Routt stated respectfully that he has a packet in front of him with pages and pages of emails and he feels this has been a delay tactic for a long time. He stated that it needs to be resolved today. Other Board members agreed.

Mr. McClung then stated that the notice of this meeting dated March 9, 2022, from the Building Official's office; he then questioned if the letter was the notice of this meeting.

Mr. Loving stated that the letter was notice of the hearing.

Mr. McClung then stated that the City has not followed the procedures outlined in that code section, specifically three because the procedure calls for Mr. Loving to advise the Board and for the Board to advise us in writing and he just confirmed that this came from his office and not from the Board; therefore, he asked that since the City did not follow its own rules pursuant to the code section that the case be dismissed herewith.

Chair Routt questioned where the letter was in the packet.

Secretary Graves noted that the Board received a copy of the letter separate from the packet.

Chair Routt questioned Mr. McClung's contention with the letter.

Mr. McClung stated that it was not his contention, it is the Board's rules and asked if Chair Routt had a copy of the code section in front of him.

Chair Routt stated that he did not have a copy in front of him.

Mr. McClung provided Chair Routt with a copy of the code section and stated that the process clearly was not followed in this matter and again asked that the matter be dismissed based on that.

It was noted that it's Code section 18-38, paragraph 3.

Member Hildebrand questioned Mr. McClung if he understood his opening statement to mean that it his partnership has made a decision to demolish the subject property.

Mr. McClung stated that not necessarily. If the sale is executed, then it will be demolished. If the sale isn't executed, they will look at other possibilities. He further stated that if the sale goes through, and he has every confidence that it will, there are some fine points that need to be worked on in the negotiation. He stated that they have entertained demolishing the building, but they haven't worked on all the moving parts such as the ability to reclaim some of the valuable and historic timber inside the building.

Member Botts stated that in his opinion, the Board is an entity of the City of Salem, which is also represented by the City's attorney and the Building Department is also a part of the entire entity. He stated that a letter from the Building Department calling this meeting should be as if it came from the Board.

Mr. McClung respectfully stated that is not what the code says, which is what the City should follow.

Member Driscoll respectfully stated that it is about interpretation of the code and how each person interpretes it. He is inclined to agree with Member Botts.

Chair Routt asked the City Attorney for his interpretation.

City Attorney Guynn stated that the Board is like any other corporate entity, and corporations have to act through people. The Board is active through the Building Official in giving the notice. He gives it on behalf of the Board. He doesn't have any authority otherwise; therefore, due process has been met in this case for two reasons: 1) that he acts on behalf of the Board, and 2) the notice that was given is still valid—it gave you the time, it gave you the issues and told you what would happen if you didn't show up. Due process has been met, and in his opinion it is lawful to continue.

David McClung, 1480 Hollybrook Road, Salem, appeared before the Board and asked respectfully to the city attorney, where that authority can be delegated from the Board to the employee of the City of Salem.

The City Attorney stated that it is inherent.

Mr. McClung stated that it sounds like it's in the eye of the beholder.

The City Attorney stated that he is not going to argue.

Mr. McClung stated that Mr. Loving has been speaking during parts of this meeting and he did not get sworn. He questioned if this was common process.

The City Attorney stated that he thought he was sworn because he saw him stand up and hold his arm up.

Mr. McClung stated that Mr. Loving did not, because he watched him—he thought that was going to happen and it did.

Secretary Graves stated that Mr. Loving could be sworn again and could testify again.

Mr. McClung stated that he was just inquiring.

Chair Routt asked if Mr. Loving would mind being sworn again.

Secretary Graves again administered the oath to Mr. Loving.

Mr. McClung asked that everything Mr. Loving has said before this be stricken.

Chair Routt stated that Mr. Loving will just repeat what he previously stated; and would repeat it again.

Mr. Loving again stated that he was the Building Official of the City of Salem, and that the meeting is being held today because it is his opinion that the structure at 17 E. 7<sup>th</sup> Street is in violation of Section 18-38 of the City of Salem ordinance. The Board can see from the packet that the documents show the deterioration of the structure and numerous conversations he has had with the property owners about resolving the issues. They have failed to produce any documents explaining the building will be brought into compliance and that it is safe. He brought the issue to the Board in hopes that the City can get some resolution in this matter.

Chair Routt asked if any other person(s) wanted to speak on the matter.

Lew McClung reappeared before the Board and stated that Mr. Loving sent out pictures that he hopes the Board has, with arrows pointing to deteriorated sections of the building.

The City Attorney noted that this is not an examination, it is a public hearing.

Mr. McClung then asked if the Board had photos of the deterioration.

Chair Routt stated that the Board has photos.

Mr. McClung stated that Mr. Loving points to specific areas. He asked the Board to ask Mr. Loving, even though Mr. Loving is an extension of the Board, if there is anything else that

they need to know that needs to bring the building into compliance either through repair or demolition. He stated that the arrows point to two specific areas.

Chair Routt stated that the Board is here to look at the record from the City's standpoint—to look at items Mr. Loving has addressed and Mr. Loving has addressed with you.

Mr. McClung stated that looking at that, the Board will see that the square footage of deterioration that Mr. Loving notes does not come anywhere close to what the statute calls for to be a violation of same so for that reason he would like for this case to be dismissed because there is no reason for this hearing since there is no violation of the code, and math should not be up to interpretation.

Member Driscoll stated that no one said math was up to interpretation Number One.

Mr. McClung stated that the Board is trying to prevent him from doing that.

Member Driscoll stated Number Two: Mr. McClung has been in discussions with the City as far back as October 2021. Someone has communicated on Mr. McClung's behalf named Fran—Fran Ferguson, and questioned if that was the architect.

Mr. McClung stated that it is his sister, member of the LLC and ownership of the property.

Member Driscoll stated that in one of the emails, there was a discussion about safety and that your architect said that the building as a whole was unsafe. He further stated that it doesn't matter what the building looks like, if it's unsafe, then there's an issue. As close as the building is to the road, if a good, strong wind blows that structure out onto the road and kills a passerby, there's bigger problems. He stated that the Board is not out to get anyone—the biggest thing is public safety first and foremost. He feels the building is not safe.

Mr. McClung asked Member Driscoll on what basis he makes his determination.

Member Driscoll stated 1) photos, 2) he stated that he stood outside that building today at about 12:30 this afternoon and looked at it himself.

Mr. McClung asked Member Driscoll what degree he has that would allow (i.e. engineering) for that interpretation.

Member Driscoll stated that his degree is common sense.

Mr. McClung began to ask Member Driscoll another question and Chair Routt halted the questioning. Chair Routt stated that the Board is not here for question and answer; and is not here to question Mr. McClung. It is about Mr. McClung making his statements in regard to this matter.

Mr. McClung stated that he feels this matter is a non-issue because the math does not add up to a violation of the statute. The statute clearly states the percentage of damage that has to be present and there is no way using gut feelings or anything else for that to be interpreted as having been met by this building.

Chair Routt noted Mr. McClung's statement.

Mr. McClung further stated that despite anyone's feelings otherwise, it comes down to simple math.

Member Botts stated that the Board depends on the Building Department and their authority, and their experience of knowledge of building practices to give the Board recommendation. The Building Official's recommendation is that the building is structurally unsound and unsafe. The Building Official gave the property owners every opportunity, numerous times, to provide architectural or structural engineer—certified, licensed—to prove otherwise, and it hasn't been done. It wasn't done in October, November, December, January and here it is the last day of March, and it's still being discussed. He stated that the Board is going to make a decision today based on recommendations of the Building Official.

Mr. McClung stated that he will note that Mr. Loving's recommendation was preceded by "in my opinion this building is" and he would like to have the opinion removed and replaced in a calculated fashion this building is in violation of. If it is done that way, the Board will see that there is no reason for them to be here today. He further stated that he has never seen such vitriol from a Board such as this and he would like it noted because he feels that it does seem like the Board is after someone and they are as tired of it as the Board. He further stated that the Board has let procedure walk by, a request for a sale of a building that will result in demolition go past, let common sense and common math go by, and he is interested in having it end today as well. He stated that he hoped the Board would consider it without thinking of people that complain about buildings in Salem, but think about the progression of what the property owners intend to do with the building, which is to demolish it.

Chair Routt stated that he understands Mr. McClung's request; the Board has not made any decisions—they are hearing everything that anyone wants to say.

Mr. McClung stated that he does not agree that the Board has not made a decision yet—not publicly anyway.

David McClung appeared before the Board again and presented some photographs of the property. He stated that we have not decided when he describes building what it means. On the front of the photos presented, it was a roof portrait straight down. For the point of understanding, he would like to ask the Board to have Mr. Loving to describe what portion of the building or all he is talking about.



Chair Routt stated that this is not a question and answer session.

Member Bott asked when the photos were taken.

Mr. McClung stated that the photos were taken four or five weeks ago. He stated that in the lower, center right, you can see the equipment that is preparing to take down the stable that they agreed with the Board some months ago to do. He stated that the photos were comparatively recent.

Secretary Graves noted that the stable structure was removed last year.

Mr. McClung stated that it was removed in December or somewhere along that time. He further stated that the building was built in 1890. He is 93 years old and feels there is no one alive who knows more about the building than he does. He was in the building with his father when he was 12-13 years old and has been interested in it ever since. He has a history of 80 years in the building and if the Board really wants to know something about it, he can tell you.

Chair Routt asked if there were any other person(s) to speak on the matter, and no other person(s) appeared before the Board.

Mr. McClung stated that he is not going to get any clarification as to what Mr. Loving means by a building.

Chair Routt asked if the property owners received photos like were given to the Board.

Mr. McClung stated that they received photos.

Chair Routt stated that he would be wasting time if he went through and noted everything that had been noted by the City in five photos. To save time, he is not going to read what Mr. Loving wrote, but if Mr. McClung has a copy of the photos, then he is aware.

Mr. McClung stated that he has a copy of the photos, but he can guess, but this is no time to be guessing. He thanked the Board.

Chair Routt again asked if there were any other person(s) to speak on the matter. He then asked the Board if anyone had a motion to entertain.

Member Botts stated that the Board will make a motion, second it, debate it, and then vote on it.

Member Botts moved to introduce a motion that the owner of the property located at 17 E. 7<sup>th</sup> Street be allowed 30 days to apply for a demolition permit to remove the buildings on said property. Demolition of these buildings should be completed within 120 days of this

meeting. If either of the conditions are not met, the City of Salem will proceed with the demolition and all costs will be charged to the owner and the City will place a lien on the property in the amount of the costs of the demolition and removal and disposal of the debris.

Member Frye seconded the motion.

Chair Routt asked to take a few minutes to discuss things before taking a vote.

The Board discussed the motion among themselves and asked the City Attorney a question.

Chair Routt noted that there has been a motion for the owner to apply for a demolition permit within 30 days of today.

Secretary Graves questioned 30 days to obtain a permit.

Chair Routt stated to completely pull a permit, not just apply for the permit, within 30 days of today and from that day, the day the permit is pulled.

Secretary Graves clarified that the motion was for 120 days from the date of today to complete the demolition.

Chair Routt stated that it was 30 days from today to pull a permit and 120 days from today to complete the demolition.

Member Botts confirmed the timeframe.

Chair Routt again clarified that the motion stated 30 days from today to obtain a demolition permit, and 120 days from today to complete the demolition.

Secretary Graves noted that an asbestos report would need to be submitted along with the demolition permit application; and the asbestos, if any, would have to be removed before the building could be demolished. Same as it was when the "stable" on the property was demolished.

Member Botts questioned if 30 days was ample time.

Secretary Graves stated that 30 days should be ample time.

Member Driscoll stated that the verbiage should be changed to 30 days to obtain a demolition permit.

Member Botts amended the motion and re-read it.

ON MOTION MADE BY MEMBER BOTTS, SECONDED BY MEMBER DRISCOLL, AND DULY CARRIED, the property owner of the property located at 17 E. 7<sup>th</sup> Street has 30 days from the date of the meeting to obtain a demolition permit to remove the buildings on said property; demolition of the buildings shall be completed within 120 days of the meeting; if the structures are not demolished within 120 days, the City will demolish the structure with the costs charged to the owner, and a lien will be placed on the property for said demolition – the roll call vote: all – aye.

ON MOTION MADE BY CHAIRMAN ROUTT, SECONDED BY MEMBER BOTTS, AND DULY CARRIED, the meeting was hereby adjourned at 4:18 p.m.