

**Salisbury Planning
Board Meeting Minutes**

Date: Wednesday, January 22, 2020

Place: Colchester Auditorium, Salisbury Town Hall, 5

Beach Road Time: 7:00 p.m.

PB Members Present: Chair Don Egan (**DE**) , Vice Chair John “Marty” Doggett (**JMD**), Clerk Gil Medeiros (**GM**), Louis Masiello (**LM**) , Deb Rider (**DR**), and Alternate John Schillizzi (**JS**).

PB Members Absent: None

Also Present: Assistant Planner Bart McDonough (**BMD**) and Director of Planning Lisa Pearson (**LP**) .

DE brought the meeting to order at 7:00 p.m.in the Colchester Auditorium, Salisbury Town Hall. Announced, per opening meeting law, that the meeting was being recorded.

1. Public Hearings—7:10 pm

- a. **(Case Continuance) Special Permit and Major Site Plan Review—**238 Lafayette Road (Assessor Map 23, Lot 17)—Request made by Ganesh Wellness, LLC.

BMD stated that the applicant has requested a continuance until February 12, 2020 at 7:10pm.

JMD motioned to continue.

GM seconded.

Vote: 5-0, motion passed.

- b. **(Case Continuance) Minor Site Plan Review —**139 Elm Street (Assessor Map 9, Lot 18)—Request made by Li Realty Trust.

BMD stated that the applicant has requested a continuance until February 12, 2020 at 7:10pm.

LM motioned to continue.

DR seconded.

Vote: 5-0, motion passed.

- c. **(Case Continuance) Special Permit and Major Site Plan Review—**To consider an Order of Remand, issued by the Massachusetts Land Court, requesting a Special Permit and Major Site Plan Review to allow the use of the property at 8, 16 and 18 Broadway and 6-28 Oceanfront South as a mix-used redevelopment comprising 235 residential units and 7,187 square feet of commercial space, pursuant to §300-67 of Article VII and §300-109 of Article XVII of the Zoning Bylaws of the Town of Salisbury and pursuant to M.G.L. c. 40A §9.

JS recused himself, as he is an abutter to the site.

JMD motioned to open the public hearing.

GM seconded

Vote: 5-0, motion passed.

Plans and submittals:

- Plan set for Proposed Condominiums at Ocean Front South, for Big Block Development Group, 98 Elm Street, Salisbury, MA, dated August 2, 2017, rev thru 2/5/2020, prepared by Millennium Engineering, Inc., 62 Elm Street, Salisbury, MA 01952 consisting of 11 sheets [Perimeter Plan-C-1, Existing Conditions C-2, Demolition Plan C-3, Utility Plan C-4, Parking Plan Ground Floor C-5, Parking Plan Upper Level C-6, Grading Plan C-7, Pile Plan C-8, Site Detail C-9, Drainage Details C-10, and Erosion Control Details C-11];
- Salisbury Big Block Exterior Lighting Plan, dated 7/18/2017, prepared by Visual constituting of one (1) sheet; and
- Application for Site Plan Review received by Town Clerk November 13, 2017.

Planning Board Chairperson Don Egan gave a synopsis of the project history. In April of 2018, the Planning Board granted a Special Permit and Major Site Plan Review approval for a proposed mixed-use redevelopment at Broadway and Oceanfront South. Forty-four conditions for approval were specified under the approvals. The applicant/developer [Big Block Development Group, LLC] appealed certain conditions for approval to a court of competent jurisdiction. The case was remanded by the Land Court and now back before the Planning Board for consideration.

The applicant/developer's appeal was comprised of three (3) components: 1. The applicant/developer did not agree with the Building Inspector's determination under the Town of Salisbury's Zoning By-law stipulating that the project require a Special Permit for the project's proposed height (of greater than 65 feet); 2. The applicant/developer asked the Court to void the Town of Salisbury Design Guidelines [§300-71]; and 3. The applicant/developer objected to 18 of the 44 conditions of the original approval; 26 were not in dispute.

Chair Egan noted that revised plans had been submitted to the Building Inspector and were now before the Planning Board for consideration that evening. Furthermore, Mr. Egan stated the Land Court ruled in favor of the Town and upheld the Design Guidelines as an element of the Town of Salisbury's zoning power. Finally, the remand by the Court called for the removal or rewording of ten (10) of the conditions by the Planning Board. Eight of the contested conditions shall remain in place.

The Chair invited Steve Paquette, representative of Big Block Development Group, LLC, to describe the revised project. Accompanying Mr. Paquette were: Wayne Capolupo; Brian Mulcahy; Mr. Nabhan; Dave Gallagher, Project Legal Counsel; Eric Botterman, Millennium Engineering; and Dale Gienapp, project Architect.

Architect Dale Gienapp exhibited renderings of the mixed-use development and described the scope of the project, which includes public space, boardwalk inviting pedestrian connectivity, commercial uses, and dog walk/park. Mr. Gienapp assured the Board that the height of the structure will not exceed 65 feet.

Mr. Gienapp also described parking availability. He stated there will be 379 spaces, including some elevated lift spaces for residents with more than one vehicle, satisfying the 351 spaces required under the Salisbury's Zoning By-law.

Mr. Paquette addressed objections to the previously approved project. Mr. Paquette elaborated on a substantive change to the project relating to its integration within the public realm that includes a permanent boardwalk connection, stadium-like seating [for outdoor concerts], and the entrance along Broadway.

Mr. Paquette also stated that because there is no functioning beach dune on the 3+/- acre site, the developer will restore a dune consisting of approximately 34,000 sf, which would be desirable to the Town of Salisbury Conservation Commission.

Chair Egan invited questions from the Planning Board.

Mr. Doggett inquired about provisions for "convertible condo" units, which could be occupied as residential or for commercial use. Mr. Paquette stated the convertible right of use would be disclosed to prospective buyers prior to their purchase. Mr. Medeiros asked if use may revert [residential to commercial or back]. Mr. Paquette replied that use may revert; the condominium documents would clarify provisions.

Mr. Doggett next asked if the easement for access and egress [to allow emergency vehicles, waste removal, etc.,] was resolved for use at Railroad Avenue and Ocean Street. Atty. Gallagher opined that it has not been resolved, but it is their belief that the applicant/developer has the legal right to use the easement and, beyond safety issues, it was a private matter between the two parties. Atty. Gallagher also noted he believes the Town of Salisbury legal counsel is in agreement with the developer's position, and this is not a matter of consideration by the Planning Board.

Atty. Gallagher stated that the developer's traffic expert and the Town's traffic expert are in agreement, regarding access and circulation. Atty. Gallagher stated the only access the applicant/developer will need is from Ocean Street. Furthermore, what the applicant/developer would like the Board to approve is access from the easement area; but if, for whatever reason, it is determined by a court, or the applicant/developer is unable to negotiate a resolution, then the access can be solely from Ocean Street, without the applicant/developer having to go back before the Planning Board with revised plans [or to amend the decision] once that dispute is resolved.

Chair Egan asked that Atty. Gallagher provide clarification on who will be allowed to use the easement and to describe for the Board how the easement is going to be used. The Chair reminded the applicant/developer that safety falls under the purview of the Board. Furthermore, Mr. Egan stated in order to evaluate this matter from a safety perspective, the plans must show 1. how the easement will be used, 2. where it is on the property and 3. how the traffic and safety (vehicle and pedestrian) will be handled. Chair Egan stressed that these directions must be provided via pavement markings, signage, or other means of communication for pedestrians and vehicles. Eric Botterman [Millennium Engineering] contributed that the easement is approximately 25 feet wide and should be demarcated on the driveway.

Mr. Paquette responded to the Board's concerns regarding trash removal and clarified trash haulers will not travel over the easement. Dumpsters will be screened and shielded from neighboring properties; angled dumpsters will be accessible via Ocean Street.

However, Mr. Paquette noted Fire and Police Department may use the easement under Massachusetts statute.

Mr. Paquette opined the applicant/developer does not anticipate any residential or pedestrian use of the easement.

Mr. Paquette reiterated there is a recorded easement, albeit there may be some dispute as to rights; but, this is a private matter between the applicant/developer and Ocean Echo [the other party].

Mr. Paquette concluded by saying the applicant/developer designed the easement for access and egress to show the Board that it may work, and so the applicant/developer may have the flexibility to use the easement once dispute is settled. Chair Egan responded that he concurred; however, it is not expressed, as such, in the remand petition that was filed by the Court.

Board members were shown the location of the screened, eight (8) cubic yard dumpsters in response to Board member Masiello's inquiry. The applicant/developer and end user will coordinate a schedule to determine frequency of commercial trash pickup.

Chair Egan asked about bonding [performance guarantee] for infrastructure. Mr. Paquette was amenable to presenting draft documentation for Board members, in preparation of the next continuance of this public hearing.

The Chair moved on to review comments received on the date of this hearing from Building Inspector Scott Vanderwall regarding Special Permit [Re: If proposed height is greater than 65 feet, a special permit is required]. Assistant Planner Bart McDonough read the Building Inspector's comments into the record.

In summary, the Building Inspector noted the plans, as submitted for review by the applicant/developer, appear to encroach within setbacks. Existing conditions do not show evidence of a proposed lot merger; therefore, the proposal for development does not illustrate it satisfies Town of Salisbury zoning setback requirements. The plans, as revised however, show maximum height elevation does not exceed 65 feet. The Building Inspector informed the Board he had not concluded his review of revised plans in time for the evening's Planning Board meeting and additional review comments would be forthcoming for the Board's consideration.

The Planning Board sought clarification by the applicant/developer about commercial space in the public realm. The applicant/developer responded that transfer of ownership of parcels for proposed commercial use had not been completed. It was determined that commercial development may be further discussed as a condition for approval.

Atty. Gallagher returned to the podium to briefly speak to the Board about condominium ownership vs. leasehold tenancy. At this time, the applicant/developer had not made a final determination on housing type for the mixed-use proposal.

The Planning Board Chairperson opened the hearing to the public.

Mr. Neil Harrington - Town Manager for the Town of Salisbury: Speaking on behalf of the Town, revitalization of the beach center is integral to Salisbury. Mr. Harrington strongly supports improvements to our shoreline. Public - private partnerships are a means for helping to make Salisbury a more attractive, family-friendly destination.

Mr. Freeman Condon (6 Forest Road) – Expressed support for the project proposal and complimented the due diligence of the Planning Board in shaping the project.

Mr. Tim Lisauskas (15 Ocean Street) – Voiced concerns about the mass size of the building and its shadow cast, thereby impacting neighbors; dumpster location could be less conspicuous to current neighbors; trash management plan for all residential and commercial users should be framed; concerned about traffic impact on existing neighborhood.

[Board responded: Two traffic studies completed and found acceptable by Town's peer review; Health Inspector will weigh in on trash management.]

Mr. Sal Russo (11 Railroad Avenue) – Voiced concerns about shadow cast by structure and loss of sunshine. Also, sought clarification on easement.

Ms. Jean D'Orsi (11 Railroad Avenue) – Sought clarification on easement. Also, traffic circulation on/off site. Lights from automobiles may be intrusive to existing neighbors. Building massing. Asked to be included in further discussions.

Hearing no further questions from the public, the Chair brought discussions back to the Board.

The Planning Board did not have adequate time to consider department review comments or comments from the Town's the consulting engineer. The Board will take comments under advisement and discussed at the next meeting of the Planning Board.

Next steps: Applicant agreed to continuance to February 12, 2020; Atty. Gallagher to have further discussions with Ocean Echo, and conversation with Salisbury Legal Counsel and Planning Department, regarding easement; Bonding (performance guarantee) verbiage to be drafted by applicant/developer; Applicant to withdraw Special Permit application.

**Chair Egan asked for a motion for case continuance to February 12, 2020 at 7:10 p.m.
Motion by Mr. Medeiros, second by Mr. Doggett; motion carried five (5) – zero (0).**

2. New Business

a. Signing of plans and permits

No new plans or permits.

b. Review of condominium documents, pursuant to the Planning Board's minor site plan modification decision, dated May 31, 2019 – 57 Railroad Avenue (Assessor Map 32, Lot 86 – Request made by Daly Group, LLC.

Atty. Lisa Mead (Mead, Talerma, and Costa, LLC, 30 Green Street, Newburyport, MA), representing the Daly Group, LLC, addressed certain provisions of the Condominium Documents that were conditions for approval for Minor Site Plan Modification for 57 Railroad Avenue. It was noted for the record that the applicant's agent was not before the Planning Board for modification of a Minor Site Plan decision.

Atty. Lisa Mead informed the Board that the Condominium Rules and Regulations will incorporate certain conditions found in the Declaration of Trust regarding snow removal and visitor parking availability at the municipal lot. Atty. Mead also noted the provisions shall stipulate that owners of condominiums will not enclose the area beneath their [outdoor] deck.

Atty. Mead assured the Planning Board deregistration of the Railroad Avenue Land Court parcel will be recorded along with a new perimeter plan of land which has been prepared and these will be recorded at Southern Essex District Registry of Deeds.

The Planning Board accepted the condo documents on a motion by Mr. Masiello, with second by Ms. Rider for a vote of five (5) – zero (0).

c. Approval not required under the subdivision control law – 15 Forrest Road (Assessor Map 20, Lot 5) – Request made by Steve Paquette.

Plan(s) and submittals reviewed by the Board:

- Proposed Approval Not Required at 15 Forest Road (Map 20, Lot 5) for SPL Development Corp, 10 Northern Boulevard, #13, Amherst, MA 03031, dated January 9, 2020, prepared by Millennium Engineering, Inc., 62 Elm Street, Salisbury, MA 01952;
- Application for Endorsement for a Plan Believed Not to Require Approval received by Town Clerk January 15, 2020;
- Deed Book 18674, Page 558; and
- Letter of Authorization from owner Wendy Worth dated 01/14/2020.

The Planning Board voted to endorse the ANR plan on a motion by Mr. Medeiros; second by Mr. Masiello for a vote of five (5) – zero (0)

d. Request for a Site Plan Modification and request for a Certificate of Completion – 82 Lafayette Road – Request made by Brendan Doherty

Plan(s) and submittals reviewed by the Planning Board:

- As-Built Plan of Land Showing Existing Conditions at 82 Lafayette Road, Salisbury, MA dated January 7, 2020, rev thru 12/04/2020, for Brendan Dougherty, 12 156th Street, Newbury, MA prepared by Millennium Engineering, 62 Elm Street, Salisbury, MA 01952;
- Letter of request for Certificate of Completion from Christopher York, P.E. Millennium Engineering, Inc., 62 Elm Street, Salisbury, MA 01952; and
- Request for Certificate of Completion.

Eric Botterman (Millennium Engineering, Inc., 62 Elm Street, Salisbury, MA 01952) represented applicant, Brendan Dougherty. Mr. Dougherty seeks to close-out and modify the previous approval which allowed for the construction of two (2) storage facilities. The applicant no longer desires to construct a second storage facility at the rear of the parcel.

Chairperson Egan expressed concerns regarding lighting spill over from the site onto abutting properties. The Chair asked if the illuminated signage installation had received approval by the Building Commissioner.

Mr. Dougherty responded the signage had been installed by a sign contractor under permit approved by the Building Commissioner; however, illumination of building signage was not approved. Mr. Dougherty assured the Planning Board that the signage would not be illuminated.

Comments from Abutters:

Mr. Jonathan Sweet (79 Lafayette Road) described the nuisance of 21 interior lights and 13 exterior lights affecting the enjoyment of his property.

Mr. Shawn Hopkins (77 Lafayette Road) opined the existing lighting did not honor the approved lighting plan.

The Planning Board reviewed comments prepared by the Town's Consulting Engineer, Joseph Serwatka, P.E.

It was determined the interior lighting should be turned off to avoid intrusive lighting on neighbors. It was also determined that the developer return to the Planning Board with an updated photometric plan and proposal to eliminate light spill over onto adjacent properties. The Planning Board invited the applicant to submit a request for Modification of Site Plan Approval, revised site plan showing modifications, and proposal for bonding [for final clean up at site].

Chair Egan asked for a motion for case continuance to February 12, 2020 at 7:10 p.m. with instructions that the applicant work with the Planning Department to resolve the issues of concern discussed at this meeting.

Motion by Ms. Rider, second by Mr. Doggett; motion carried five (5) – zero (0).

- e. **Request for a site plan modification and request for a certificate of completion – 1 Washington Street, formerly 158 Beach Road (Assessor Map 27, Lot 33) – Request made by Coastal Lane, LLC.**

Plan(s) and submittals reviewed by the Planning Board:

- As-Built/Minor Site Plan Modification for 1 Washington Street - Formerly 158 Beach Road (Map 27, Lot 33) for Coastal Lane, LLC, 91 Belmont Street, North Andover, MA 01845, dated January 9, 2020, prepared by Millennium Engineering, Inc., 62 Elm street, Salisbury, MA 01952;
- Request for Certificate of Completion dated January 9, 2020 submitted by Christopher York, P.E. Millennium Engineering, Inc., 62 Elm Street, Salisbury, MA 01952 on behalf of Coastal Lane, LLC; and
- Memo from Realtor [Gretchen Maguire, RE/MAX on the River, 11 Market Square, Newburyport] evidencing the current visitor parking spaces are acceptable to owners.

Eric Botterman (Millennium Engineering, Inc., 62 Elm Street, Salisbury, MA 01952) represented developer, Coastal Lane, LLC. Mr. Botterman reviewed a letter of response from the Town's Consulting Engineer, Joseph Serwatka, P.E., to the As-Built plan and modification request. The following items remained to be addressed by the applicant:

- i Parking spaces were not constructed as per the approved plan;
- ii Parking space demarcation was spray painted on the pavement surface;
- iii Plan shows a visitor space that may affect Unit Four's ability to back up;
- iv Driveway width was not constructed as proposed;
- v Vinyl fencing and two (2) gates along the Beach Road frontage was not proposed before the Planning Board;
- vi Paver patios were constructed larger than proposed;
- vii Landscaping was not installed per approved plan;
- viii Utilities were not installed as per approved plan;

In response to Mr. Serwatka's letter, Mr. Botterman offered the following: Mr. Botterman provided a memo from the Realtor for the developer assuring the Board that guest parking met with buyers' expectations. The visitor parking spaces will be professionally marked and the As-Built plan will reflect the dimensions of the parking spaces associated to serve the units. Mr. Botterman assured the Board that the revised dimension of the driveway (due to visitor parking relocation) would not produce a net increase in stormwater run-off. Mr. Botterman explained that the unit buyers requested the installation of a fence for privacy and safety reasons. Paver patios were indeed larger in dimension, and landscaping and utilities were not to approved plan.

Chairperson Egan reminded the developer's agent that it was the responsibility of the developer under site plan approval to return before the Planning Board prior to making changes to an approved site plan design.

Discussion ensued. The Planning Board suggested that the applicant's agent confer with the developer to discuss the submittal of revised plans for landscaping; parking, circulation and visitor parking; and fence design for further consideration by the Board.

Chair Egan asked for a motion for case continuance to February 12, 2020. Motion by Mr. Medeiros second by Mr. Doggett; motion carried five (5) – zero (0).

3. Other Business

No new business.

4. Correspondence

No new correspondence.

5. Executive Session

No Executive Session.

6. Adjournment

Meeting Adjourned 9:53 p.m. on a motion by Deb Rider; second by Vice Chair Doggett. Motion carried Five (5) – Zero (0)

*** Documents provided at the meeting are on file in the Planning Office**

Minutes approved by: _____

Date: _____