

**Salisbury Planning Board  
Meeting Minutes**

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**Date:** Wednesday, April 11, 2018

**Place:** Colchester Auditorium, Salisbury Town Hall, 5 Beach Road

**Time:** 7:00 p.m.

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**PB Members Present:** Vice Chair Gina Park (**GP**), Don Egan (**DE**), John “Marty” Doggett (**JMD**), Louis Masiello (**LM**) and Gil Medeiros (**GM**).

**PB Members Absent:** Chair Helen “Trudi” Holder (**TH**)

**Also Present:** Assistant Planner Bart McDonough (**BMD**), Planning Board secretary Sue Johnson (**SJ**)

Vice Chair Gina Park 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. New Business**

- a. Signing of Plans / Permits** – nothing to be signed
- b. Approval not Required**—37 Gardner Street—Frank and Heidi Carvalho

**Eric Botterman (EB)** stated that he was representing the Carvalho’s and would like to get the ANR endorsed. **GP** asked how people would be getting in and out. **EB** stated that lot # 1 has an existing driveway and that lot # 2 will have an easement which will not affect the wetlands. **LM** asked how much square footage is left on lot # 2 to build on. **EB** did not have the actual square footage but estimated it to be approximately 12,000sf. **LM** asked if it was a buildable lot. **EB** replied that they believe it to be. **DE** asked if there were currently any buildings on lot # 2. **EB** said no. **DE** asked if the building on lot # 1 met the setbacks. **EB** stated that it did meet the zoning requirements.

**JMD motioned to endorse the ANR.**

**LM seconded.**

**Vote: 5-0 motion passed.**

- c. Adjustment of the Maximum Inclusionary Housing Contribution Payment**

**BMD** stated that contribution payment for 2017 was \$18,398.94.

The single family median housing cost for the following years was:

2016 - \$304,450.00

2017 – \$343,500.00

**BMD** stated that it was a 12.8% increase. **BMD** went on to state that 12.8% over last year would be an increase of \$2,355.06 which would bring 2018’s total to \$20,754.00 and that there is a cap of \$21,000.00.

**LM motioned to approve the Maximum Inclusionary Housing Contribution Payment to \$20,754.00.**

**DE seconded.**

**Vote: 5-0 motion passed**

**2. Public Hearing 7:10 pm**

- a. **Cont. Public Hearing:** A major site plan filing by Pensco Trust Company & Riverside Contracting INC Employee Pension Trust for property located on 70 Brissette Avenue Salisbury, MA. Proposed work is to redevelop the lot to construct 4 single family housing units.

**GP** stated that the Planning Board needs to decide on the curb cut for the development and the applicant needs to confirm the configuration of the buildings on the site plan to make sure that they match the architectural drawing. **Arthur Broadhurst (AB)** stated that since the last meeting he met with **BMD** and the DPW director to discuss the curb cuts and they came up with an alternative plan to for each hose to have a 12' curb cut with landscaping between or two 20' shared driveways without landscaping. **AB** stated that he preferred the look of the 12' curb cut driveway. **AB** stated that he included a new drawing showing color and scalloped siding and is still deciding on whether or not to add shutters **GP** asked if there was a landscape plan. **BMD** stated that there wasn't an updated landscape plan due to the open decision of which curb cut to go with. **DE** stated that he would like to see more landscaping to define the curb cuts. **DE** suggested 18' openings in front of each of the buildings and all the rest of the frontage is landscaped with some physical barrier (i.e. boulders or granite marking). **AB** stated that he had no objection to that. **GP** asked about the configuration of the buildings on the site plan to make sure that they match the architectural drawing. **AB** stated that the way it is presented is the way it will be seen. **DE** stated that he didn't see a landscape plan and that he did not feel approval could be made tonight because it does not meet the submission requirements. **DE** stated that there also wasn't a luminaire plan which is also required. **BMD** suggested to approve the projects with the condition that the applicant come back with a landscape and luminaire plan. **DE** stated that he thought the applicant should ask for a continuance because the submission guidelines were not met. **AB** stated that he would ask for a continuance and also stated that he didn't want to hire an engineer to draw up a lighting plan. **DE** suggested that the applicant request a waiver and a condition be drafted that there will be no spillover of lighting onto the adjacent property or public way. **AB** agreed to request a waiver.

**DE motioned to continue to 4/25/2018 at 7:10pm.**

**GM seconded.**

**Vote: 5-0 motion passed**

- b. **Public Hearing:** A special permit filing by Alternative Therapies Group Inc. for property located on 107 Elm Street Salisbury, MA. Proposed work is to renovate an existing structure for the purpose of accommodating a Registered Marijuana Dispensary.

**AB** stated that ATG (Alternative Therapies Group) is a non-profit organization founded in 2012 with a Board of experienced professionals with extensive degrees in business and

medical. ATG became the first licensed medical marijuana dispensary in Massachusetts. **Christopher Edwards (CE)** Executive Director of ATG reviewed the layout and process of the proposed dispensary. **CE** stated that there will be a security guard at the main entrance who will police the parking area and will check patient's credentials. **CE** explained that the credentials to be checked are the patient's state issued ID (i.e. driver's license) to verify the person's identity and their DPH registration card making sure it is not expired. Once cleared by the security guard the patient would be allowed inside the main entrance check in area where there would be another security guard. The patient would be facing a security window which is bulletproof with a slide through tray. The patient would then slide their credentials under the window to the attendant who would then look up the patients identification the DPH's patient registration database to ensure that it is not a counterfeit ID and that their registration is in good standing also that their doctor certification has not expired and that they have not exceeded their 60 day purchase allowance. If everything checks out the patient would be buzzed in to the retail area. First time patients will be required to go through a patient education orientation process and are required to sign legal acknowledge the rules and regulations for the facility as well as an anti-diversion attestation. After making their purchase they would exit through the main entrance. **CE** discussed the delivery area stating that the vehicle would drive into the garage bay where the door would be closed behind them. All unloading of product is done securely behind closed doors. **CE** discussed security systems throughout the facility and stated that their detailed security plan was presented to Chief Fowler and his staff which was endorsed. Chief Fowler did have a recommendation to put bollards outside the front windows. **CE** stated that they agreed and would have them installed. **LM** stated that the Chief had questions about the sign and asked **CE** to explain. **CE** stated that they are proposing 12sf of signage on the existing sign post and adding a sign that would be physically attached to the building. **LM** asked if the mulched area out front would be landscaped. **CE** stated that they were not planning to landscape and DPH regulations does not allow landscaping that anyone could conceal themselves in. **DE** suggested that ATG should put some kind of small scale landscaping that would not allow anyone to conceal themselves in. **CE** stated that they had no problem adding some landscaping but would need to approval from DPH. **DE** stated that he would like to see a barrier between the liquor store parking lot and the dispensary. **CE** stated that he felt if the parking lot was restriped it serve as a barrier between the lots. **AB** stated that this issue did come up in a meeting with **Lisa Pearson (LP)** and her thought was to keep it open for emergency vehicle access. **AB** stated that if it was conditioned they could try to divide with moveable items that could be removed if it didn't work. **DE** asked if the properties were under common ownership. **AB** stated that they were not. **DE** asked if they had a right to use the liquor stores parking lot. **AB** replied that currently both properties access each other's parking lots. **AB** stated that they reached out to the other property owner and are discussing issues with the lineage on both properties. **DE** stated that for safety issues there should be a separate entrance and exit which this property does not have. **GM** stated that there were no issues in the past when the party store was there and then asked the applicant what their hours of operation would be. **CE** replied that they are proposing to be open from 9am to 7pm. **GP** likes the idea about landscaping in the front using ground cover and restriping the parking lot. **CE** stated that they do not own the building and would need to get landlord approval. **GP** asked to have the curbstones in the parking lot realigned and secured to the ground and asked that the bollards be decorative. **LM** asked about the light waiver. **AB** stated that they are using the existing lighting. **LM** asked if they had filed a change of location to relocate to Salisbury.

**CE** stated that it had been completed and their Provisional Certificate of Registration from the DPH has been reassigned to Salisbury. **LM** asked where they are relocating from. **CE** stated they are relocating from Danvers. **Cheryl Papandrea (CP)**, 41 Old County Rd, asked where the grow operation was located. **CE** stated it was in Amesbury. **CP** asked if they were allowed to transport the product from Amesbury to Salisbury. **CE** stated that they were. **CP** asked who the regulatory agency that will oversee the product was. **CE** stated that the regulatory agency was the Department of Public Health. **CP** asked if they were planning to go to the recreational model on July 1<sup>st</sup>. **CE** stated that recreational is not an option in Salisbury at this time. **GP** asked if the lighting was dark sky compliant. **BMD** stated that they were using existing lighting and would need to verify if it was dark sky compliant. **AB** asked if there was a way to condition the 2 items with an approval. **BMD** said that the bylaw stated that comments from other Town departments are needed and there could not be a decision today.

**GM motioned to continue to 4/25/2018 at 7:10pm**

**JMD seconded**

Discussion:

**DE** stated that the applicant needs to finalize the design of the sign, landscape plan and if the existing lighting is not Dark Sky Compliant a plan should be made to make it Dark Sky Compliant. **GM** stated if the existing lighting has been there for a long time he did not feel that the added expense be put on the applicant. **DE** replied that his reasoning is that every site plan that comes before the Planning Board is an opportunity to make the Town better and bring it into compliance. **DE** would like the applicant to commit to making the lighting Dark Sky Compliant. **AB** asked the Planning Board what they would like to see in reference to the sign. **DE** asked what the height of the sign would be. **AB** stated it would be mounted on the same post at 6' high **BMD** stated that it could be conditioned to meet the sign bylaw.

**Vote: 5-0, Motion passed.**

- c. **Cont. Public Hearing:** A major site plan and special permit filing by Big Block Development Group for properties located on 8, 16 & 18 Broadway and 6-28 Ocean Front South Salisbury, MA. Proposed work is to construct a mixed-use redevelopment comprising 240 residential units, 6,500 square feet of commercial space and a large parking lot.

**Steve Parquette (SP)** stated that at the last Planning Board meeting the Planning Board presented them with a list of proposed conditions and believes that what they will present tonight is very positive. **SP** presented a slide show and stated that the genesis of the project began about 13 years ago with the first project presented to the Board in 2005 was South Beach Landing which was a 32 unit condominium development, the second was a 24 unit development at 2 Broadway which would have gone where the go-carts are and the third was a 5 or 6 condominium project called Song of the Sea on Railroad Ave and in 2007 the Thompson Group proposed a substantial project but unfortunately these projects were not built. **SP** stated how difficult it is to develop something with character and style along the beachfront and are hoping to convince the Board that this project brings significant improvements. **SP** presented a slide showing the value of the properties as they are now (\$7,800,000.00) vs. the completed proposed project (\$130,000,000.00) and went on to

show the current taxes being collected (\$92,976.00) vs. the completed proposed project (\$1,549,600.00).

**SP** stated that the following other fees would be collected for the Town:

- \*Affordable Housing Fee - \$1,300,000.00

- \*Water and Sewer Fees - \$2,000,000.00 +

- \*Beachfront Improvement Fees - \$720,000.00

- \*Additional Revenue generated from Commercial Development

**SP** stated that the completion of the project would result in the following environmental improvements:

- \*Removal of 3 acres of buildings that are built within the flood zone, at grade, with no storm water treatment of any runoff.

- \*Restoration of full dune function to approximately 26,000sf of land along Ocean Front South

- \*Elevation of all new construction a minimum of 3' and as high as 13' above flood zones

- \*Full compliance with DEP regulations

The applicant addressed point by point the conditions that were presented to them by the Board:

#### Visitor Parking

**Wayne Capolupo (WC)** stated that they have looked at other parking in the beach area besides the Town parking lot and there are other private parking lots within a reasonable walk to the project. In addition they have researched mechanical stacked parking which could accommodate 50 vehicles. **WC** stated that they felt that between the private parking and the mechanical stacked parking it would cover the visitor parking.

#### ADA Compliant Parking

**WC** stated that ADA parking is not required for a "for sale" project and that they had an architect determine how many spaces would be required if it was a "for rent" project and it was determined that it would require 8 handicapped spaces. **WC** stated that they are proposing is to provide 8 handicapped spaces over and above what has been proposed for both visitor and resident use.

#### ADA Compliant Sidewalks

**WC** stated that they would make sure that all of the sidewalks on Broadway and Ocean St were ADA compliant and would take on the responsibility of upgrading them.

#### Commercial Development on Ocean Front South

**WC** stated that units 113 & 114 would be dedicated to year round commercial space. In regards to commercial space on Ocean Front S they do not feel that there is a significant need for commercial space. **WC** stated that zoning would not allow cottage style vendors and felt that they would make it more difficult for the brick and mortar businesses to survive. **WC** stated that they are proposing to make 3 residential units on the South end of the building convertible to commercial space. **WC** stated that he feels that they have made a good faith effort to meet the commercial goals presented by the Board. **WC** stated that some of the most challenging aspects of Ocean Front S is providing access to retail stores and keeping a vibrant space at grade elevation which is significantly lower than the

surrounding dunes that protect Ocean Front S from storms. **WC** went on to state that for many years the Town strived to build a Boardwalk that would ultimately allow people to traverse Ocean Front S in a North South direction at an elevation that would be safe from the forces of the ocean. **WC** stated that a challenge was connecting the Boardwalk with the retail component of One Ocean Front. **WC** stated that the vision was to have the Boardwalk be the focal point of Ocean Front S. **WC** stated that the connecting the Boardwalk to the project had gone through a lot of iterations due to a legitimate public safety issue that this connection would prevent emergency response vehicles from traversing the full length of Ocean Front S. **WC** stated that they had recent discussions with the Fire Chief, Scott Carrigan, and that he had committed to them that he was comfortable with them having a permanent fixed connection between the Boardwalk and the commercial space on the Northerly terminus of the project. **WC** showed a rendition of what the commercial area would look like with the area between the Boardwalk and the retail businesses filled in with a full width Boardwalk. This would provide a large space for people to gather, places to sit and enjoy the beach view, hold events, eat outside and shop there. **WC** discussed and presented a rendition of what the Southerly end of the building would look like if the 3 retail units if the Town was able to gain complete control and ownership of Ocean Front S. **WC** stated that they had met with the Town Manager and he had indicated a willingness to commit that the Town would do whatever it takes in order to gain control of Ocean Front S which is currently under private ownership over which the Town has an easement to build the Boardwalk and pass and repass which is completely different than complete ownership. **WC** stated that by the Town expanding the scope of the easement or taking actual ownership of the property in Fee Simple we could have a pedestrian type mall at street grade complimenting the 3 Southerly commercial units. **WC** stated that he spoke with Neil and he has committed to doing whatever it takes to achieve this vision. **WC** stated that the full length of Ocean Front S would remain open and be approximately 20' wide in order to accommodate fire apparatus. **WC** showed a rendition of the stadium seating and stated that they are prepared to commit to building that improvement and stated that they do have to put in the proposal that it is not guaranteed that it is permissible from a conservation commission point of view. **WC** stated that they have a number of ideas that will make it so that they can get it permitted but in the configuration that is being presented it is technically not allowed because it is below the base flood elevation in the velocity zone.

#### Articulation of Ocean St and the back Western wall

**SP** showed the new proposed view of Ocean St stating that a great deal of articulation has been added.

#### Additional Views onto the Courtyard

**SP** stated that this presents a significant challenge due to the parking demand which necessitates the podium for a two story elevated structure and that opening these up is terribly problematic.

#### Fire Department Approval of Turning Movement

**SP** stated that the fire department did approve the turning movement in the parking garage as well as the back drive lane

#### Dog Park & Dog Waste Management

**SP** stated that dogs are allowed on the beach in the off season and they could also be walked on the elevated courtyard. **SP** stated that the new trend is for people to travel with their dogs to a dog park and named several nearby Towns with dog parks. **SP** stated in regards to a dog waste management program that it would be addressed in the condo docs.

#### Legal Status of the Ocean Echo Easement

**SP** stated that a legal opinion from their attorney was submitted to the Board and went on to state that it is their contention that they do have legal access to the Railroad Ave area and the use of that easement is for ingress only except in emergencies and that signage and an access gate would be provided.

#### Final Site Plans

**SP** stated that they did submit final site plans and the submission of final architectural drawings have not been submitted yet because they wanted to show them to the Board first

#### Massing, Articulation and Overall Compliance with Design Review Guidelines

**WC** stated that he knows there has been concern about the massing of the project as submitted and showed pictures of The Mount Washington Hotel, The Wentworth Hotel and the Frolicks that inspired the project. **WC** is very proud of the project especially the architecture and believe that the amount of articulation and the variations in the roof height, shapes and pitches are in line with that guidelines. **WC** stated that they cannot afford to lose one unit in order to keep the project economically viable and would like the Board to take this into account when deliberating the massing issue.

**Heather Fritz (HF)**, 8 Old Town Way, presented a petition to the Board signed by 222 people. **HF** stated that she was a homeowner and business owner and has been coming to Salisbury Beach ever since she could remember and spoke in favor of the One Oceanfront development. **HF** stated that she had concerns about the amount of retail space available in the project and the high rent that could make them unviable. **HF** stated the survival of any year round business in a destination location requires year round residents. **HF** stated that the residents need to come first and then the businesses otherwise the businesses would not be able to survive. **HF** stated that there are already a lot of commercial spaces available that are not being utilized on Broadway and the surrounding streets as well. **HF** stated that it is very difficult to be successful with only a three month season and feels it will be very difficult to fill the new spaces and make them viable. **HF** stated that this project would be the beginning of bringing about a thriving beach community.

**Susan Kenny (SK)**, 96 Atlantic Ave., stated that she was a homeowner and believes this project is necessary in the revitalization of Salisbury Beach and asked the Board to move forward with the project.

**Ron Tony Giordano (RTG)**, 44 Railroad Ave, believes this project will be a great addition to the area and would bring much needed revenue to the Town. **RTG** stated that this project would bring year round business to the local businesses. **RTG** stated that if the development was not approved it could be a decade or more and will leave the area in that same condition as it is in now. **RTG** stated that he hopes that the Board will consider this and approve the project that we so desperately need.

**Freeman Condon (FC)**, 6 Forest Rd, stated that he would like to thank the Board for their efforts and diligence that they put into this project. **FC** stated that many years ago he was the Chair of the Planning Board and was faced with many hard decisions about what was best for the future of the Town while not having the benefit of having a crystal ball that showed him what the future would look like. **FC** stated that these occasions require a small leap of faith and that he found the Boards task very similar tonight. **FC** stated that his Great Grandfather built the Frolicks and that his generation remembers the role it played in making the beach so vital. **FC** stated that he believes that such great buildings, structures and developments can have a positive impact on a community and contribute to the vitality and resurgence of an entire district. **FC** stated that the Town was blessed with a Boardwalk that provides an incredible view when looking East but an about face gives a very different image. **FC** stated that he would like the Board to approve the plan before them stating that he knows it is not perfect but few large developments are and has no doubt that the good outweighs the bad and to the critics he respectfully asks for a serious viable alternative. **FC** stated that it has been his long time goal to encourage the revitalization of the Beach Commercial District and truly believes that this project is a significant first step. **FC** stated that it is private property and no public monies will be used to build this project and went on to state that the Townspeople (by voting in the new zoning) overwhelmingly supported developments of this kind and that the existing building conditions are unacceptable. **FC** asked the Board to take a leap of faith and not stop what is the most serious effort at beach renewal that has occurred in the last 40 years.

**Sandy Sheaffer (SS)**, 7 Atlantic Ave, stated that she and her husband support this project and are abutters as a resident on the South side and also an abutter as a business on the North side. **SS** stated that it is her understanding that the design for the Big Block meets the current requirements of zoning and stated that this is private property and amenities are not required. **SS** stated that it would be sad to see this project stalled or not approved and be left with the present situation.

**Al Oliveira (AO)**, 233 Beach Rd, #5, stated that one of the reasons that they purchased their home in 2010 was the plans at that time for the resurgence of the area but the plan fell through. **AO** stated that this new project has them excited for the future of the Beach. **AO** asked the Board to support the project.

**SP** stated that that they reviewed the list received from the Board and selected what they thought were most critical items and feels that the changes that were made will meet what the Board is looking for.

**GP** thanked the applicant for the considerable amount of work that was done.

**LM** asked if there is fire access on the North end of the Building. **WC** stated that the Fire Chief was intimately aware of what was proposed and was ok with access to the North End of the project.

**LM** asked if there would be handicapped access on Broadway. **WC** stated that there was an elevator that would bring people to the deck area in front of the retail space.



**GM** asked the applicant if they have come to an agreement with Ocean Echo regarding legal access. **WC** stated that they received a legal opinion that they do have a legal right to use that right of way for the units that fall within the footprint of the land that the easement was granted for and has had a follow up discussion with a representative from Ocean Echo and stated that they had not come to an agreement but reiterated to the Ocean Echo representative that the easement would be used for ingress only which would reduce the traffic by 50%. **WC** stated that they are proposing to use it for ingress only except for emergency vehicles and would be limited to the condominium units that fall within the footprint of the parcels that the easement serves which is laid out in the legal opinion letter presented to the Board. **GM** asked if they would continue to work with Ocean Echo to finalize their plan. **WC** stated that would welcome the opportunity to continue the dialogue but cannot make a commitment that it would be emergency only because that would leave 240 units entering and exiting through one entrance on Ocean St which he feels is not prudent.

**JMD** asked if the elevated walkway would be phased in. **WC** replied that that would be part of Phase 1 of the project. **LP** stated that there are no approvals for the elevated walkway to be built on the right of way. **WC** stated that it is being conditioned on the Town being able to achieve the necessary right to build on the easement or taking it in fee simple. **LP** told **JMD** that there was no answer to his question; we don't have the right to say that this can occur until the Town has this right to build on the easement. **JMD** asked **LP** what the prospects of the Town gaining this right. **LP** stated that all along the Town's position was that this cannot be done. **GP** asked if the Town had utilities under the proposed raised walkway. **WC** stated that it is contemplated that all of the underground utilities are going to be moved anyway as part of getting them farther away from the ocean, so the underground utilities are not an issue. **WC** stated that the ownership issue of Ocean Front South has been an ongoing impediment and only in the last week when they got the commitment from the Fire Chief and the commitment from Neil to do whatever it takes to make this possible that made them comfortable enough bringing it to the Board as a viable option. **DE** thanked **WC** for working with the Board and the Planning Department on this project and complimented him on the redesign of Ocean Front South and if this comes to fruition he believes it is a wonderful enhancement to that section of the beach. **DE** stated that this puts the Board in a difficult position to approve the proposal with no guaranties that the Town will get approval for access to build on Ocean Front South or put in the stadium seating stairs. **WC** replied that it is very simple, stating that this is what they are proposing and if it turns out that they can't build this then we will have to come back to you with plan B. **DE** asked if the plans had been submitted to the Planning Department for incorporation into the site plan application. **WC** stated that they had not made an official modification to their current submission because they were under the impression that they could not put any sort of a permanent structure or impediment to through traffic on Ocean Front South and stated that they are relying on Neil's verbal commitment that he will do whatever it takes by way of either expanding the easement or by taking the property by fee simple eminent domain to make this a reality. **DE** stated that he thought it was a fabulous enhancement. **DE** stated that the application has to be approved by the deadline of April 18<sup>th</sup> and that the applicant is putting the Board in a very difficult position and asked **WC** if there is any way they could extend the date until the 25<sup>th</sup> because we can't approve the plan you are showing we can

only approve the plan you have given us. **WC** stated that they are up against a very difficult date on which their purchase option for one of the major pieces of this assembly expires on April 20<sup>th</sup> and in order to extend that it will cause them to incur a significant nonrefundable additional financial deposit. **WC** stated that if the Board could give us a reasonable assurance that the plans are at a point where they are approvable then they would be happy to take that leap of faith, incur that financial risk and grant the additional extension.

**DE** stated that one of his concerns is the relationship of the project to Broadway and stated that the stadium stairs can't happen because they would be on public land. **DE** stated that in the letter sent by the Planning Board that it be redesigned so that the stadium stairs would be on the applicant's property. **WC** stated to accomplish what you just said is a major change to the project and would cause them to have to redesign that entire quadrant of the building and that since this would be a public amenity he felt that it should not be an issue being put on public property. **DE** stated that he did not disagree with that point but it is the feasibility of making it happen. **WC** stated that it wouldn't be dictated by whether it is on private land or public property because the approvals from DEP and Con Com won't care who owns the land, the rules are the same and stated that it is an open, unresolved issue. **GP** asked if stadium seating is something that can be put on public land. **BMD** replied that they would need to look into it and that there would have to be significant events that would have to take place before that could happen. **SP** stated that he wanted to address **DE** comments that nothing has changed on Broadway and stated by virtue of attempting to integrate the Boardwalk with the expanded commercial concourse which would now be connected seamlessly to the commercial concourse which will eventually run all the way down Broadway. **SP** said that this will affect the projects interrelationship with Broadway. **SP** stated that the peer review done by PPS and Abacus both stated that the developer and the Town need to work together to resolve these issues. **SP** stated that resolving the issues of Ocean Front S and the stadium seating would take time and they are asking the Board to take a leap of faith and take these things outside the scope of the permit when voting.

**DE** stated that on Ocean St there is somewhat of a lack of articulation and the massing on that neighborhood is particularly dramatic and would benefit by being set back from the property line. **DE** stated that after reviewing the zoning for that area he is not sure that it meets the setback requirements asked the applicant to commit to stepping the building back and installing some landscaping between the sidewalk and the building to soften the massing would be beneficial. **WC** stated that it is impossible for them to provide a setback on Ocean St because it would make them lose units and they cannot afford to lose any units. **WC** stated that they were confident that they meet the setback on Ocean St. **SP** stated that in regards to the issue of massing directly opposite of this front Eastern portion is the building that everyone refers to as Terry O'Reilly's building which is the same height as this and from a massing standpoint this is the one corner where we would contend is the closest in massing to everywhere else in the entire perimeter of the site. **DE** stated that Mr. O'Reilly's building has landscaping and is set back from the street which mitigates the impact plus it was pre-existing. **DE** stated that in reviewing the zoning bylaw he believes there is a 5' setback on Ocean St and does not how this was missed in the preparation of the plan and asked someone to correct him if he was wrong. **WC** stated that he thought that what **DE** stated was incorrect and that Ocean St is in the Beach Commercial District and that district has zero lot lines. **DE** stated that that was for

commercial development and read from the Dimensional Control Table that Beach Commercial District for residential states that the minimum allowable front yard setbacks is 5' which affects Ocean Front S and it also affects Ocean St and stated that there are minimal allowable side yard setbacks as well. **DE** stated that he didn't know why the Town Engineer didn't pick this up and stated that somebody should have picked this up before today. **DE** stated that this impacts the project not only from the question of what kind of setbacks should be shown but what are required by the bylaw as well. **WC** stated that they do not believe that the bylaw is being interpreted correctly and stated that it is a mixed use project. **GP** stated that the Board should focus on the questions that pertain directly to the changes that they made to say if we are ok with those. **DE** stated in regards to Ocean Front S and asked how the Town can make sure that it happens. **WC** stated that if the Town is unsuccessful in securing Ocean Front S that they would have to come back to the Planning Board. **LP** stated that there is no guarantee and it is impossible for the Board to decide anything tonight because what was presented was not given to you. **LP** also stated that the traffic pattern has changed since the parking reviewer has reviewed it and they also received legal opinion today that has not been reviewed by Town Council or presented back to their Council as requested. **GM** asked **LP** what the Board's options were today. **LP** stated that they worked very hard to get you a decision tonight but as Bart prepared the decision new information was presented. **LP** stated that we couldn't get a decision written for you in order to make a decision tonight. **LP** stated that if they are not going to give you a continuance than you are stuck making a decision based on what has been presented to you at this point. **DE** stated that they haven't submitted a plan. **LP** stated that it can't be based on what was shown tonight because it has not been submitted to you. **GP** stated that the applicant has made great strides and improvements but we will need to ask for a continuance because we will need to review the changes that were suggested and digest the information. **LP** stated at that point your option would be to get a continuation to the Boards next regularly scheduled meeting which the applicant would have to agree to or you would have to continue it before the deadline of next Wednesday which would mean a Tuesday night meeting in order to come up with a decision based on the information you have and if you do not have time to get all of those answers back then your decision would be based on not having time to get back all of the information. **DE** asked **LP** if they were to approve this with conditions that required the applicant to come back for additional site plan review could these matters be handled during subsequent hearings. **LP** stated again that they tried to have a draft decision for you tonight and there is no way to do that based on the information that we currently had so there is no draft for you to approve tonight but you could make a conditional approval with requirements to come back with more defined information. **DE** stated conditions such as dealing with the easement issue. **LP** stated that she would not recommend conditioning that one because that could substantially change the project and stated that this should be resolved before you can make a decision. **DE** did not see how this could be resolved by the 17<sup>th</sup> or 2 weeks from now because there are 2 parties to a potential lawsuit. **DE** stated that if Ocean Echo wanted to litigate that it could kill the project. **LP** stated that they would have to appeal the decision. **LP** stated that the Board would get a decision from Council and that a decision could be made based on their recommendation. **DE** asked if Town Council could make a decision before next Tuesday. **LP** stated that a lot of work would need to be done and that they have been waiting for the legal opinion for a long time. **DE** stated that it was a giant problem and **LP** agreed. **GP** stated that we have a viable project here that has made great strides and we are following the process to

get us to where we need to be and does not feel that we should jump the gun and force a decision without reviewing and digesting all of the information. **WC** stated that if Town Council was going to be the arbiter of this issue it could take months to get an answer. **WC** stated that you can condition the approval of this on the access from the denoted right of way ultimately becoming reality and then it becomes a problem between two private property owners to resolve their differences and if ultimately they were not able to do this then they would have to come back to the Board with a changed condition. **GP** asked what the change would be. **WC** stated that he did not know and it would be their problem to convince you that they do not need access off of Railroad Ave after all. **LP** stated that the Town Council would not be asked to be the arbiter but would be asked to offer an opinion based on what they are seeing from the two sides. **LP** stated that we have done this on multiple different projects and stated that any time there is an issue like this Town Council weighs in and gives the Board what the recommendation is to protect the best interest of the Town. **JMD** asked if the Board would have more information before Tuesday. **LP** stated they would have to ask Town Council but normally they are not that fast with a response. **WC** stated that he did not understand why the approval cannot be contingent upon this issue being resolved. **LP** stated that it is the main ingress to the property. **WC** stated that the main ingress and egress is on Ocean St. **LP** stated that you can't delete or change the traffic patterns and a new review would need to be done. **LP** stated that the Board is making a decision on the traffic study which was done prior to tonight. **WC** stated that they could live with a conditioned approval that if we are ultimately successful in gaining access of Railroad as proposed in our submission documents. **LP** stated that if that is not viable then we have a traffic study that is no longer valid. **DE** stated that in the letter from the attorney it stated that Ocean Echo retained the right to issue the easement and asked if they submitted the easement to the registry and is it on the certificate of title. **WC** stated that it was and the package that the Board received today has the complete chain of title documents. **LP** apologized to the Board for sending them last minute information. **WC** stated that they only got the letter from opposing council 2 weeks ago and turned it around as soon as possible. **GP** stated that now the Board needs time to turn it around. **WC** stated that he has no reservation about conditioning an approval on the ultimate validity of the easement. **WC** stated that if they find out it was not they would have to come back to the Board and start over. **WC** stated that they are the ones taking a chance. **LP** stated that we are taking a chance and if we are appealed by Ocean Echo then the Town will be sued. **GP** stated that there needs to be an opinion first and that accurate information is needed. **WC** stated that the Board issues approvals with conditions all the time and they are very comfortable with their legal standing and are comfortable taking the chance that it will stand the legal test. **GP** stated that makes sense from his perspective but from the Town's perspective they need to get an opinion before they can make a decision.

**GP** asked if the 8 handicapped spaces were for residents that are handicapped and handicapped visitors were open to the public. **WC** stated no they are only for handicapped residents or guests.

**GP** asked what type of material the white capped tops of the building would be. **WC** stated that it will be hearty plank.

**GP** asked if dogs were going to have a place in the courtyard to do their business. **WC** said that they contemplate that the courtyards would be available for people to walk their dogs but this will be managed by a condo association. **LP** stated that the Board can condition that they have a place for pets.

**GP** asked **WC** to confirm that in the changes they were adding commercial space to the project. **WC** replied that commercial space was added and in Phase 1 it will be commercial and in Phase 2 it will be convertible.

**GP** stated that there are a number of variables that we need to get more information on and would like to continue to work with the applicant and nail it down so there are no surprises so the applicant will know exactly what the decision will have in it but if they do not get an extension to work that out we will be forced to come up with a decision based on the information that the Board has. **WC** stated that if the Board would give us a reasonable comfort level that they would be inclined to approve the project and if the applicant were able to give the Board a comfort level in regards to the issues that were raised they would be happy to grant the extension. **GP** stated that she did not know how we could do that. **WC** suggested a straw poll. **DE** stated that he was not comfortable doing a straw vote on a project of this magnitude and complexity especially in light of all the information that has been introduced today and felt that it was an unreasonable request. **GP** stated that to a certain degree it would be a leap of faith. **GP** stated that they have given us a leap of faith and we should give them a leap of faith; it's a way to continue the process so that we can continue to move forward with the partnership and get this to be the best project it can be given the parameters that the Board has to work in. **JMD** stated that he would like to reconvene on Tuesday which would give us a little more time to digest the information. **GP** stated that she did not believe that all of the professionals could get back to the Board by Tuesday. **JMD** stated that by Tuesday we will not have all of the information but we may have more information than we have now. **GP** stated that what she is hearing from **WC** is that if he feels that if the Board is willing to continue to work the process and are favorable to the project he would grant the Board an extension to finish the work and went on to state by giving a vote of confidence we could have an extension which would reduce the stress preparing for next Tuesday and by the next regularly scheduled Board meeting we could be all set to make a decision. **LP** stated that she did not feel that was accurate and in order to thoroughly review this the Board would not have a decision in 2 weeks. **LP** went on to state that the Board was just given information today and does not have the plans to review. **GP** stated that the applicant was going to provide them right away. **WC** stated that the plans would be given to the Board right away. **GP** asked **WC** if he would rather have 2 weeks rather than a few days. **WC** stated that given the magnitude of the project he felt that dedicating a meeting for next Tuesday night to discuss this project is a worthy exercise and by then maybe both parties would have a comfort level that is something they can live with and then they can agree to a lengthy extension. **LP** stated that if we only have until Tuesday we will need to spend the entire time writing a decision based on lack of information then it is a very complicated that legal council will have to help us create. **DE** stated that we still have to debate all of the conditions. **LP** stated that was correct and that you do not have 12 hours to hold this meeting and if you want us to go in that direction we will start working on a decision for Tuesday. **DE** stated that the biggest change was on Ocean

Front S and that the likelihood of it being determined by next Tuesday or six months from now is highly unlikely and went on to state that there could be eminent domain issues and permitting issues with DEP so if that is the biggest change he dated that we already have all of the information other than the easement and to disregard what was presented tonight. **DE** stated that the decision would need to be based on the plans that have been submitted and condition in the commercial aspect. **GP** asked if the Board needs the meeting on Tuesday to get organized and look at what we have. **DE** stated that his proposal would be to base our decision on the material, the plans and the opinions from the review architect and the Town Engineer. **GP** stated that the decision should be drawn up for Tuesday. **DE** said to start to write up the decisions and he has a lot of conditions that he would like to propose for the Boards consideration and believes that they should all be debated. **GP** asked if they should close the public hearing. **LP** stated that there are still outstanding legal and engineering issues. **DE** stated that he is concerned because only 4 members of the Board can vote on this and the special permit requires 4 votes so it would have to be unanimous and the site plan is a majority vote. **WC** stated that they filed for the special permit because they were uncertain of the height but at this time they feel comfortable that they meet the height requirement so they do not need the special permit and will send something in to officially withdraw that request. **DE** asked **LP** if the Board could close the public hearing on the special permit only. **LP** replied yes and stated that there are 2 separate public hearings going on and was not sure how the applicant was going to withdraw the special permit based on the plans that the Board has now and asked **WC** if they will be submitting new plans. **WC** stated that they would not be submitting new plans and feel that the height calculation that was done meets the overlay zoning definition of height. **LP** stated to the Board that the Building Inspector believes that you should have the special permit in front of you. **WC** stated that it is their risk to take and if they withdraw the request for the special permit for height and the Building Inspector ultimately denies the building permit because we need a special permit then we would have to come back to you. **LP** stated that she did not disagree and suggested to **DE** to either ask them to withdraw the special permit tonight or make a determination on the special permit tonight just in case you do not have 4 members on Tuesday. **WC** stated that if the 4 Board members were going to vote for it then we do not have to withdraw it, but if there is a question we would prefer to withdraw it and take our chances. **WC** stated that the Board still controls the fate of the project because we need approval on the Site Plan Review no matter what happens and if you did approve the height special permit it really wouldn't change the fact that the Board has control over the site plan review. **DE** stated that he was sorry for bringing up splitting the 2 public hearings. **GP** stated that she was available on Tuesday night and asked the Board who else would be available. **GM**, **JMD** and **DE** all stated that they would be available. **LP** asked **DE** if he wanted to submit his conditions to the Board so they could review them by Tuesday. **DE** stated that based on the plans that are before us and the feedback received from the Town Engineer, PPS and Abacus Architects as well as testimony taken at the Public Hearings he drafted some conditions for the Planning Board to review while considering this project. **DE** stated to the applicant that most of these conditions were sent to them in the letter from the **GP**. **DE** stated that he wanted to point out something that was discussed in a previous meeting regarding the noise in the neighborhood from the air conditioning equipment and wanted to be sure that they will not be window or wall mounted units and another item he wanted to address was his interpretation of the bylaw that pertain to the setbacks on Ocean St and Ocean Front S.

**Don Borenstein (DB)**, attorney for Ocean Echo Condominiums. DB stated that he received the letter from Regnante, Sterio & Osborne Law Firm and had a brief chance to review it today. **DB** stated that the short of it is that the development team does not have the property rights to access over the Ocean Echo property to serve this project and stated that it is not his opinion but was their own attorney's opinion. **DB** stated that when this legal opinion is reviewed it will be made very clear that the easement rights do not to extend to any land other than 2 assessors parcels and went on to state that the project is made up of a dozen assessors parcels and would be a clear overloading of the easement rights. **DB** stated that you can't use easement rights to benefit a small piece of the project or even half of the projects to support the entire project. **DB** stated that he is surprised that this type of legal issue and title issues is cropping up this late for a project of this magnitude and stated that he was not contacted by the developer's attorney to discuss the legal title and is troubled that they are not at the meeting tonight explaining their own legal opinion to the Board. **DB** stated that the Board is getting a paraphrase from the development team that paraphrases that it has a complete chain of title. **DB** stated that this title chain is far from being a complete chain of title and does not feel that the applicant can do what they are proposing to do. **DB** stated that the Board would be very wise to take the suggestion of the Planning Director that Town Council weigh in on the issue. **DB** believes that the applicant has access rights issues and they need to talk to Ocean Echo to see if they can't be resolved and stated that as far as he know they have not done this. **WC** stated that their lawyer's opinion says is that our rights over the Ocean Echo property extend to 2 lots and those 2 lots comprise of approximately 50% of the land for the entire project and we can allow access over the Ocean Echo property to any unit that falls within the footprint of those 2 lots. **WC** stated that they are not trying to use Ocean Echo access for units that fall on the other 8 lots. **GP** asked how they would control the access for the units that fall on those 2 lots. **WC** stated that it is going to be access controlled and the only people that will have access to that gate will be the units that fall within the footprint of the 2 lots that are in fact granted easement rights over the Ocean Echo property. **BMD** stated that the Board needs a legal opinion on that. **LP** stated that this would change the traffic scope that was being discussed earlier.

**GM motioned to continue until 4/17/2018 @ 6:00pm in the Colchester Room at Salisbury Town Hall.**

**JMD seconded.**

**Vote: 4-0. Motion passed.**

- d. **Public Hearing:** A major site plan filing by Kevin McDonald aka Coast Lane LLC for property located on 158 Beach Road Salisbury, MA. Proposed of work is to demolish 3 existing structures and construct one building with 4 residential units.

**EB** stated that the only reason this plan is in front of the Planning Board is because the gentleman that owns the property has 4 residential units (2 single family, 1 duplex) and one of the single family homes is not on his property. **EB** stated that it is part on the Town's property and part on the State's property and went on to state that the home was put there with a permit a long time ago and that the ZBA granted him a variance for 4 units. **EB**

stated that they are taking the 4 units and combining them into one building with 4 units. **EB** stated that one of the reasons that this is being expedited is because the Town is doing a project on Washington St and Hayes to add sidewalks and drainage which will begin next week and the house in the right of way is in the middle of where the new road is going to be and will need to be removed to prevent delaying the contractor which would add additional cost to the Town. **EB** stated that approximately three weeks ago the applicant got their variance from the ZBA. **EB** showed a plan of the 4 unit building and stated that each unit will have 2 spaces (one in the garage and one in front) and one visitor parking spot for the building. **EB** stated that the runoff from the roof will go into a leach field type of system. **EB** stated that each unit will have a water and sewer connection on Washington St. **EB** stated that the only Driveways for these units will be off of Washington St. **EB** stated that their light plan is dark sky compliant. **EB** showed an architectural rendering of the building and the landscape plan. **GP** asked if it was a one or two car garage. **EB** stated that it was a one car garage. **LP** stated that the Town has been working with the Owner since the Town started the President's Streets Project for approximately 2 years ago. **LP** stated that the Planning Department has been working with the developer on the design to meet all of the typical requirements that the Planning Board asks for. **LP** stated that by removing the building that is not on the developers land it would bring the property back into conformance. **LP** stated that they have gone above and beyond to provide a storm water system, a plentiful landscape plan, and trash pickup which would eliminate the need for a dumpster. **LP** stated that the front of the building will face Beach Road. **LM** stated that he thought the front would be on Washington St. **LP** stated that the street address would be Washington St because they will drive in that way but the Front would be on Beach Road. **GP** asked if snow storage would be in the visitors spot. **EB** stated yes that was the plan. **LP** stated that visitors could park on Washington St. **DE** asked about the setback on Beach Road. **BMD** showed the Board the chart with the setbacks listed. **EB** stated that this was approved by ZBA. **DE** stated that multi-unit dwellings are not permitted in a commercial district and asked how they can combine all 4 into one unit. **LP** stated that it is pre-existing and it based on the number of units not the number of dwellings. **DE** disagrees with the Zoning Boards decision. **DE** stated that stacked parking is not allowed under the bylaw. **LP** stated that the Planning Board has approved this in the past. **DE** stated that past zoning violations do not need to be perpetuated. **LP** stated that the Planning Board does not have the authorization to determine a zoning violation and went on to state that is the decision of the Zoning Enforcer. **DE** stated that every time the Building Inspector permits stacked parking he is violating the zoning bylaw. **LP** stated that the Building Inspector is the Zoning Enforcer. **DE** stated that he would like to see more landscaping between Beach Road and the development. **EB** stated that more landscaping can be added. **DE** would like to see the front of the building along Beach Road look more like the front. **GP** suggested adding awnings over the doors. **EB** agreed that they could do this. **DE** stated that the back door looks like a basement door and would like to see a front door. **LP** asked **EB** if his client could make some architectural changes and we could vote on this at the meeting on Tuesday (4-17-18). **EB** stated that he did not know why changes couldn't be made and asked for suggestions from the Board. **DE** suggested some type of ornamental fencing between the trees on Beach Rd. **DE** stated that in regards to the lighting it looks like there may be spillover onto Beach Road and asked if the fixtures were dark sky compliant. **EB** stated that they would be recessed. **DE** asked for revised plans showing this. **GP** would like to see the front entryway look more inviting.



**GM motioned to continue to until Tuesday, 4/18/2018 at 6pm in the Colchester Room at the Salisbury Town Hall.**

**LM seconded.**

**Vote: 5-0 – Motion passed.**

**4. Other Business**

- a. Certificate of Partial Completion—158 Elm Street—Wrangle Realty Trust  
**BMD** stated that the applicant wanted to convey to the board that they would do everything that was suggested during the site plan visit and stated it is written in the letter that was presented to the Board. **BMD** stated that the applicant will be submitting revised plans to the Board soon.
- b. Discussions regarding zoning changes for May 2018 Town Meeting.  
Recreational Marijuana  
**BMD** stated that at the next meeting the Board would have a proposal in front of them for recreational marijuana.  
Duties of the Building Inspector Paragraph E & F  
**BMD** stated that the Board will have information to review prior to the next meeting.  
Amending the Zoning for Lot 38 – Map 6  
**BMD** stated that it would change the zoning from medium density residential & commercial to village center district.  
Amending the Zoning Map

**5. Correspondence**

**GP** asked if the correspondence could be postponed.

**BMD** stated that was ok to postpone the following:

- a. Minutes: February 28, 2018
- b. Minutes: March 14, 2018
- c. Letter from DEP regarding Planning Board's Responsibilities during Chapter 91 General License Certifications

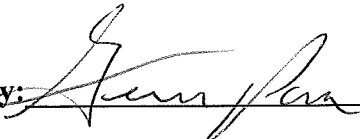
**6. Adjournment**

**DE Motioned to adjourn.**

**GM seconded**

**Vote: 5-0 – Motion passed**

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

Minutes Approved By:  Date: 6-27-2018

