



TOWN OF SALISBURY
Zoning Board of Appeals Hearing
Colchester Room @ Town Hall, 5 Beach Rd

MEETING MINUTES – PUBLIC HEARING

Hearing Date: February 13, 2018 @ 7:00 pm in the Colchester Meeting Room

Members Present: Susan Pawlisheck (Chairperson), Derek DePetrillo (Secretary), Kevin Henderson, Joseph Stucker, Linda Tremblay

Members Not Present: All present

Staff Present: Scott Vandewalle, Zoning Officer/Building (Inspector)

Chairperson Pawlisheck (Chair) called the meeting to order @ 7:00 pm.

1. New Public Hearings

- A. Case No. 18-03 Petition for Relief by Variance:** Relief from the dimensional requirements; specifically, the petitioner is asking for a waiver of the 500' minimum distance radius as described relating to residential dwellings.

Address: 107 Elm Street

Applicant: Alternative Therapies Group, Inc.

(Attorney) Arthur Broadhurst, Methuen, MA is at the meeting on behalf of Alternative Therapies Group, Inc. **(ATG)** Mr. Chris Edwards is CEO of company. **(Mr. Edwards)**

(Attorney) explained a new bylaw in the overlay district which requires that any licensed facility has to be 500 feet away from daycares, hospitals, etc. The bylaw also includes dwellings. Even if the Planning Board can give waiver to reduce to 25ft., this would not cover the footage for dwellings. Therefore **(ATG)** is asking for variance for the homes the Planning Board cannot give a waiver to. **(ATG)** reached out to all abutting families; letters of support are in the package presented tonight. Since Planning cannot grant all the footage, we are asking the Zoning Board for relief.

Salisbury Town Counsel suggested applying for a waiver. We are seeking a variance for those particular houses that don't meet the 500 foot setback that the Planning Board can't grant a waiver to.

(Attorney) (ATG) is the first licensed medical marijuana facility in Massachusetts. They have been in business for almost 3 years and are the most experienced vendor in Mass.

Questions:

(Mr. Henderson) asked if (ATG) owns the property at 107 Elm Street or rents?

(Mr. Edwards) replied that they will rent the property from owner C. Deschenes; using the front half of the building.

(Ms. Tremblay) asked why only 4 support letters were written when there were 8 parcels of land affected; **(Mr. Edwards)** assured her all were in favor. **(Ms. Tremblay)** wanted to make sure all abutters were represented; and were properly notified.

(Chair) explained a variance is usually applied to structure not for a dimensional use?

(Attorney) responded that a variance usually includes topography and relates to 40A and many communities use a variance as a tool/mechanism

(Chair) is not in favor of allowing something that she knows is going to be appealed immediately. The onus of enforcing the zoning bylaws is pushed back to individuals.

(Attorney) explained there are no available structures or land anywhere in town concerning the 500 feet. He feels this is the only way to waive the setback to meet the 500 feet.

(Chair) the Use is allowed, but doesn't meet criteria.

(Attorney) advised the Board that this case still has to go before the Planning Board.

(Mr. Stucker) asked if there was any correspondence from Town Counsel recommending a variance?

(Chair) explained the Town Counsel advised the applicants to go that way; advice only.

(Ms. Tremblay) again asserted that she wanted all abutters/homeowners represented.

(Mr. Edwards) explained he met with every parcel holder; eight of them. Only (5) responded.

Any abutters? None.

(Mr. DePetrillo) asked what would happen if a variance is not granted?

(Mr. Henderson) asked if there was nothing else available for a location?

(Attorney) stated there were not many reasonable locations. It is unique in Salisbury that a residential setback is included in the bylaw.

(Mr. Edwards) said even undesirable locations came with all the parameters. Some type of relief will be needed at any site.

(Chair) explained that the warrant and bylaw, was written, voted on and passed at town Meeting and included the 500 ft.

(Mr. DePetrillo) asks what is the concern to the Board if the neighbors are not complaining or speaking out.

(Chair) replies that this is the first case of its' kind and a precedent will be set.

MOTION: Mr. DePetrillo made a motion to grant the variance to the shape of the lot. Mr. Stucker seconds the motion.

VOTES: Ms. Pawlisheck, Ms. Tremblay and Mr. Henderson vote in favor of the motion. Motion passes unanimously. All members express their vote verbally.

2. Continued Public Hearings

Case No. 18-01 Petition for Relief by Administrative Appeal: An administrative appeal of Building Inspector Scott Vandewalle's Order dated November 8, 2017 pursuant to Section 300-31; 300-33 of the Town of Salisbury Zoning Bylaw (the "Bylaw")

Address: 5 Gerrish Road

Applicant: John Silva Jr. and Deborah Silva

(Attorney) Mark Griffin from Finneran and Nicholson Law Firm, Newburyport MA is at the meeting on behalf of Mr. and Mrs. Silva.

(Attorney) presented 3 main arguments. The case should be disposed of and then he will represent 2 alternative arguments.

(Attorney) explained that many chronological events were listed in the letter of corrections along with many issues pertaining to the history of the property.

(Attorney) stated the Silva's position is that basically anything prior to the issuance of building permit for the accessory apartment and renovation of the basement is not relevant.

(Attorney) states that the Statute of Limitations applies with respect to issuance of a building permit for construction of an accessory apartment and basement apartment at 5 Gerrish Road. The home is located in the R2 Zoning District. It is currently listed on the Assessor Field C as a 2 family with an accessory apartment.

Current use is not allowed per the Building Inspector in the Letter of Correction. Two (2) single family uses are not allowed in the R2 zoning district.

(Attorney) continues; explaining the property background.

Special permit was applied for to construct an accessory apartment for the parents; create a suite for a sister, and install a bedroom for the state respite worker for sister.

A Special Permit was granted, but asked for the removal of an illegal garage apartment. This apartment shows on the plan as being removed, shows as having a proposed addition. That proposed addition is where the accessory apartment was supposed to go, for the parents; the sister was in the basement apartment as it was converted for her use. A building permit was then issued.

(Attorney) exhibits the Building Permit. Attorney states all signoffs are obtained; and it is ready for use and occupancy.

(Attorney) submits to the Board that the construction done at 5 Gerrish Road was done in accordance with the building permit.

(Attorney) states that one thing he did not submit with materials prior to the meeting was the application for the Building Permit. Attorney Griffin now hands out the Building Permit application and plans; stating the application does not shed much light.

(Attorney) states after the permit issued, construction took place and was signed off. Shortly after, the applicants were assessed (per accessor card) in Year 2006 as a 2 family with an accessory apartment. Each apartment has received Habitability inspections from the Health Department.

(Attorney) states the letter of correction was issued after expiration of the Statute of Limitations. He quotes the provision to protect landowners who improve their property in accordance with a building permit and the statute of limitation. The time period is 6 years. This permit was issued in 2005, construction was done in 2006; it has been utilized therefore immune from enforcement.

(Attorney) states if the Board votes to uphold the Building Inspector's Letter of Correction and also deny the appeal, there is a 10 year Statute of Limitations also pertaining to structures. The 10 year statute could protect enforcement of a forced removal of structures built more than 10 years ago. The Building Inspector's Letter of Correction states to have the illegal apartment removed; Attorney Griffin states this method is unnecessary; a method of least impact should be pursued, i.e., take out one component to meet the definition (bedroom , stove); it is then outside the definition of a dwelling.

(Attorney) provided to the Board emails received from residents/neighbors in support of the applicants.

(Inspector) explains the history of the 5 Gerrish Road property back to 1983.

Pictures were shown of the property before construction, before and after the building permit was issued; and a picture of the unit removed.

A current picture of the home was shown, a visual and also an overhead shot.

(Inspector) states the garage is no longer a unit. An accessory apartment was put up in 2005. The center unit is in contention in the lower level of the home. In 1972 it was a single family dwelling. It seems the hairdressing shop in the basement grew into an accessory apartment.

(Inspector) acknowledges the Assessor card stating it is not a legal definition of a dwelling unit; the card acknowledges that the assessor sees and then they tax what they see.

(Inspector) discussed Assessor records from numerous years and the many modifications over time during Solioutis ownership, to Proctor ownership.

(Inspector) also presented street listings, which is used as a census device for who occupies dwelling. Address went from 5 Gerrish Road in 1983 to 1984 street listing as 5 Gerrish and 5R Gerrish.

(Inspector) stated many changes in 1985; 3 unit building although owner not living on the property in the middle of the R Zone (for a single family building). There are no permits on file for any of these units.

An application was filed in 1984 to do renovations although no approval was found to create this unit. Prior owner admits to illegally constructing an apartment per meeting minutes from 3/12/84. He had permits to build 2 units. In 1984 an application was made to do renovations. Still no approval found to create these units.

Per the meeting minutes Mr. Proctor admits to illegally constructing an apartment. Zoning minutes (3/12/84) states he had permits to build 2 units.

(Inspector) states a 3 unit apartment building now exists with no owner living there in 1984 in a single family zone.

(Inspector) showed letters from (4) neighbors complaining about the dwelling due to parking problems caused from barbershop customers and dwelling residents.

In 2005, the Silva's want to legalize the garage unit (which was done without a permit by Mr. Proctor)

At the ZBA meeting on 11/6/02 it was acknowledged that 2 apartments existed in the basement, 1 in garage, plus owner unit. No permits for any of them.

At the 12/11/02 meeting the applicants asked to withdraw their petition without prejudice. This was the first mention of a special permit to legalize the basement apartment.

In 2004 there was a petition for a special permit so the dwelling could be used for extended family and parents.

In 2005 the apartment turned into a handicapped suite. Per request, conversion will include a separate room for extended stay for state worker.

(Inspector) opinion is that all is interconnected; state worker room is a suite. Worker cannot get to other unit without going through a locked door. Presented as open suite; not multiple accessory.

(Chair) asked which part was the addition. **(Inspector)** shows on drawings.

(Inspector) plays minutes from 2004 Planning Board Meeting. Applicant explains 2 apartments in the extended family house. Garage that was an apartment was converted back into a garage. The rental unit in the basement was used for respite care. No tenants, just family. Planning Board video discussed how many apartments, what kind, parking spaces etc. A motion was made to approve the special permit stipulating it could not be able to be turned back into apartments in the future. The kitchen is there but will be inoperable.

(Chair) explained this video is Planning; Zoning Board video available but the written decision and minutes are available. Do not show video.

(Inspector) stated he spoke to past members of the board and there was much confusion as to the number of units in the building. The final decision was to remove the exiting apartment return the building to garage storage and a new addition to the existing house.

(Inspector) showed the 2005 building /renovation plans. The Building Permit was signed in September, 2005. The definition in the drawings were met, however, these drawings do not represent what is there today. There are life safety issues concerning fire walls, sprinklers etc. besides zoning violation.

(Inspector) discussed the 6 year statute of limitation; because there is no original Building Permit to go back to for the basement unit, the statute does not apply. The 10 year statute would apply however again, the use requires an original permit.

(Inspector) quoted Attorney Carol Rolf whose works are used for research. " If there is no original permit, the building official can take action at any time; there is no statute limit."

(Inspector) refers to Beach Road case in which Town Counsel, in an email, refers to the Statute of Limitations use per the original permit, not the Special Permit. Special Permit does not prove legality; the original does. No legal standing.

(Inspector) discusses the State Zoning Act, referring to the Enforcement letter sent out. It is a standard policy. The Applicants can appeal it, to BBRS; but have not. **(Inspector)** explained the zoning laws violated. No permit on file and no occupancy on file.

(Inspector) states his opinion that there is no original permit for this use. Time to make the building what it is supposed to be; a single family home with one apartment.

(Chair) states Mr. Proctor wanted a suite and an apartment in the basement. The suite was sectioned off and became its' own entity.

(Attorney) states mistakes were made, however the basement apartment was validated by virtue of the issuance of building permit in 2005. He also discussed a similar case – Oak bluffs case.

(Chair) asked if there were walls there currently-referring to the 2005 plans.

(Mr. Henderson) stated it does not appear that the rooms are separated.

(Attorney) states the garage is back to a garage. The plan shows 2 dwelling units; one is a suite.

(Chair) states another apartment has been created from original plans; a permit should have been pulled for this change; it was not.

(Chair) asks for the owner to appear at podium and asks is the section of the home called 'Suzy's apartment' segregated by walls at this time?

(Mr. Silva) replies 'yes'; by doors. It is separate from the accessory apartment. The doors have always been there. There has been no construction on the property since 2005.

(Attorney) states the building was built according to plan. No Occupancy Permit was issued and he does not know why. It was built in accordance with the permit and was signed off on. It has been utilized as a separate dwelling unit by Suzie (daughter) and then a rental unit/dwelling unit all that time. Protected by the 6 year Statute of Limitations that protects homeowners. **(Attorney)** states that even if there was confusion concerning the Zoning and Planning Boards, none of that governs whether the Statute of Limitations is triggered or not; only the Building Permit itself. Also, the Assessors card recorded a 2 family and accessory apartment.

(Chair) again reminded the participants that assessors just assess.

(Mr. DePetrillo) asked the Inspector why the Special Permit sign off does not apply.

(Inspector) states to refer to the Town Counsel email; to defer to the original permit, but there is no permit for use in the first place.

(Attorney) states he is not familiar with the Town Counsel opinion as he had not seen it.

(Attorney) states another case known as Schwartz vs Silva; a land court case – Judge Sands.

(Chair) requests to discuss the current use of the property – the owner will represent the family.

(Mr. Silva III) explains he wanted a larger home and tried to purchase it from his parents. It was when the appraiser went to town hall that questions began to come forth. He and his family now live there with his parents and there is one apartment. 'Suzie's apartment' is now being rented. He lives in the home. They are in the accessory apartment.

(Mr. Stucker) states one family is living there but it is (3) generations. The owners live there with someone in the Accessory Apartment; right now it is 2 family home even though 1 family lives there. As usage stands, the rental apartment is for a renter. The rental is the problem. The rental is separate from the family home.

(Chair) asked the (Inspector) what was expected from the applicant?

(Inspector) states that the third dwelling unit there is not in compliance. Use of that should be ceased and desisted as a 3rd unit. It has to be eliminated in its entirety.

(Chair) asks (Inspector), in your opinion, what has to be removed from basement apartment in order to comply?

(Inspector) we ask that the kitchen be removed in its' entirety. An Occupancy Permit is required according to the plans.

(Chair) the home is being sold to the son, the suite is handicapped accessible; it should not be rentable.

(Mr. Silva III) This is the same as 2005. The family has done nothing different. We are not asking for anything we didn't have.

(Chair) you rented it; it is a separate entity although maybe you had no intent. It makes it an independent piece of property.

(Mr. Henderson) asks, if according to bylaws, access apartments can't' be rented?

(Inspector) states the bylaw was made so the homeowner occupied the property. A single family home can have an accessory apartment but has to be occupied by the owner. The landlord cannot be absent.

(Inspector) if the building becomes 3 units, different building codes kick in, such as like a 3 family home.

(Mr. Stucker) asks if is it a 3 family as the portion being rented is not the accessory apartment. Family lives there but the rental creates 3 spaces.

(Ms. Tremblay) asks if a 2-family can have an accessory apartment.

(Inspector) No, just a single family.

(Attorney) discussion leads to suite vs. dwelling unit. You are requesting that the illegal dwelling unit be removed but the basement apartment is the issue.

Abutter's comments:

Owner/4 Gerrish Road: house is always taken care of, no issues on street. He has lived there for long time and supports the family.

Joe Gaffey/ 3 Gerrish Road: No issues, no problems with parking or traffic. Have not added anything since he has lived there. Great family.

Jim Kelkey(?): Has lived across street since 1989. He never knew they had tenants there.

(Chair) to (Inspector) asked about options. If the decision is upheld, they have to correct the situation by removing components of a rental apartment. If the decision is not upheld, it becomes a 3 dwelling building, and it will require work be done to comply with the building code. **(Inspector)** agrees.

(Ms. Tremblay) requests the case be delayed/continued to the next meeting as there are so many facets.

(Chair) inquires as to why a continuance?

(Chair) That is legitimate if the Board has a reason. Not just to delay it. Members may need more time to go through the information.

(Inspector) suggested that Town Counsel review the case, which may take a few weeks.

(Chair) to be thorough, Town Counsel may take longer than the March 13th meeting. (2 Meetings away from tonight's)

MOTION: Ms. Tremblay made a motion to grant the continuance of Case No. 18-01 to the March 13th meeting. . **Mr. Depetrillo** seconds the motion.

VOTES: Ms. Pawlisheck, Mr. Stucker and Mr. Henderson vote in favor of the motion. Motion passes unanimously. All members express their vote verbally.

A. Minutes DEREK APPROVED. LINDA SECONDED.

Meeting minutes needed to be approved and then signed by the **(Chair)**.

January 23, 2018 Mr. DePetrillo motion to accept as presented; Ms. Tremblay second. Minutes approved by all Board Members.

B. Correspondence and Other Board Business

None

C. Items Not Reasonably Anticipated by the Chair 48 Hours in Advance of the Meeting

None

D. Adjournment

Motion for adjournment was made by Mr.DePetrillo and approved by a 5-0 vote. Meeting is adjourned at 9:40pm.

- The Board reserves the right to consider items on the agenda out of order. Not all items listed may in fact be discussed and other items not listed may also be brought up for discussion to the extent permitted by law.

Next Regularly Scheduled Public Hearing: Tuesday, February 27, 2018

Respectfully submitted by Teresa Mahoney, Board Secretary and accepted at the April 24, 2018 meeting of the Board.

Accepted as Presented

Susan M. Pawlischeck Date 4/24/18
Susan Pawlischeck, Chairperson