



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

MEETING MINUTES- PUBLIC HEARING

Hearing Date: August 14, 2018 @ 7:00 pm

Members Present: Derek DePetrillo (Secretary), Kevin Henderson, Linda Tremblay, Joe Stucker

Member (s) Absent: Susan Pawlisheck

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

(Secretary) DePetrillo called the meeting to order @ 7:10 pm.

1. New Public Hearings

Case No. 18-19 Petition for Relief by Administrative Appeal: regarding an appeal of a Cease and Desist letter issued by the Town of Salisbury Building Inspector on June 7, 2018.

Address: 8 Atlantic Avenue

Map 32, Lot 99

Applicant: Patrick Carney

(Attorney Lisa Mead) approaches the podium on behalf of applicant Patrick Carney.

(Mr. DePetrillo, Secretary) explained the presence of a (4) member Board. (Ms. Mead) asks for confirmation that Mullins Rule was adopted. (Mr. DePetrillo) confirmed it was.

(Ms. Mead) explains the request for the Administrative Appeal; which is a request to overturn the Building Inspectors Cease and Desist Order of June 7th. She explained the Inspector's opinion that the improvements being made on the permit in March was more than a substantial improvement in a flood hazard zone.

(Ms. Mead) describes the current property – room/floor sizes, square feet of floors. The applicant bought house in May, 2017 and did work equal to \$19,000; however the valuation from the Assessor's office went down in value to \$51,800 in 2018.

(Mr. Henderson) pointed out that the land value at this address almost doubled.

(Ms. Mead) continued to explain that another permit was pulled in 2018 and the value of the work is \$5,000. Once walls were opened, there was a domino effect. Photos are shown to the Board. The Applicant called the Building Inspector upon his knowledge that more work had to be done. The Inspector determined the cost now exceeded the value that was originally permitted and it went beyond 'substantial value'. Mr. Carney

provided invoices for future work which equaled \$20,300 and copies are now provided to the Board.

(Ms. Mead) states that there was a possible misunderstanding. The applicant had planned to insulate the home for \$6,000 but this job was cancelled. **(Ms. Mead)** states that with this amount added in the total exceeded the \$51,800 number.

(Ms. Mead) explained that the Zoning Bylaw Section 300-37 incorporates the state building code in the flood plain district. When the Cease and Desist was issued by the Building Inspector, it was issued under that section of the zoning bylaw in addition to the state building code. **(Ms. Mead)** states that the applicant had to appeal to both the Zoning Board of Appeals and the State Board of Building Registration.

(Ms. Mead) continues to explain the state building codes vs FEMA. She also explains the substantial improvement information and what works falls under it. **(Ms. Mead)** produces a new document which is an appraisal from March 2018. This shows the market value as opposed to the assessed value. The amount is \$94,484. **(Ms. Mead)** states this appraisal clearly shows the value of the work is far less than 50% of the market value.

(Ms. Mead) discusses the Building Inspector's referral to a cumulative approach with 2017 & 2018 work. She states that she and the applicant disagree with this approach and she explains that Salisbury incorporates the State Building Code, not FEMA. The owner's work in 2018 was not related to work done in 2017. **(Ms. Mead)** states the market value of the structure is the appraised value here, not the assessed value. She states the improvements done in 2018 would be less than 50% of the market value.

(Secretary) requests the Building Inspector's response to the presentation.

The **(Inspector)** states he disagrees with the points made and has put his disagreements in writing. A copy is given to Ms. Mead. The **(Inspector)** explains the multiple flood zones, CRS program on the beach, insurance rates, flooding, etc., which are all big issues at the beach. The CRS program benefits homeowners on insurance rates and confirms the language within the Building Code is taken from FEMA.

The **(Inspector)** commented on the appeal letters and the notice of violation. The permit applied for was for \$5K but invoices of \$26k were submitted. The scope was much greater. This is the information he had to work with.

The **(Inspector)** states he is in disagreement with the documents that were used in this appeal from this applicant. The documents used don't exist in the State Building Codes and some are DEP documents, and some are commercial code forms. He states they cannot be used in this appeal nor referenced.

The **(Inspector)** explained how he came to the cumulative value; as he said existing buildings having work done in a 12 months period is a single project. We are allowed to use it.

(Mr. Henderson) questions how the work is related and references AJ101.13.

The **(Inspector)** explains how the building code interprets this and it is in his authority to use this interpretation. If the walls are opened, insulation must be put in; there were approximately 70 sheets of drywall there so that is why he added this cost to the calculation. The affidavit the applicant completed allows the market value to come from many places. The assessed value in lieu of an appraisal is accepted. FEMA allows him to use the assessed value. The appraisal from the applicant was not submitted until recently.

The **(Inspector)** explains 'substantial improvement' and the way his calculation was done, which includes the insulation. He states he was handed a pile of paperwork, not a detailed estimate or breakdown of costs, which is stated in the affidavit. This is what he had to work with and these are his final figures. He states it is his determination that there is a violation here. The state board has the authority to determine if there is or is not a violation under the building code. The **(Inspector)** stands by his determination and his documents.

(Ms. Mead) again approaches the podium and explains that because in the Cease and Desist letter the construction is in a flood hazard area, the case goes under both the Zoning and Building Code bylaws. If her applicant just went to the State Board, he would have lost his right under the Zoning Board. She also stated that particular parts of information they used did refer to DEP forms.

(Ms. Mead) gave examples of a (12) month period, and what is a separate project. The Flood Hazard area definition talks about improvement and permit; one specific thing; not plural.

(Mr. Henderson) inquired as to when the Building Code was effective; January 1, 2017.

(Ms. Tremblay) inquired at what percentage the applicant was at. **(Ms. Mead)** informed her the work had stopped.

Applicant **(Mr. Carney)** approaches the podium and explains how the project started, explained the photos given to the Board and about the insulation project that was cancelled with Mass Save.

(Ms. Mead) suggests the meeting be continued until after the hearing in front of the State BBRS; the meeting is the following week; see what they have to say and come back to the Zoning Board.

(Secretary) asks if any abutters? None. (Off camera next door neighbor speaks up to support applicant).

MOTION: Mr. Stucker made a motion to continue Case 18-19 to the August 28th meeting until after the State Board meeting in Boston. Ms. Tremblay seconds the motion.

VOTES: Mr. Henderson and Mr. DePetrillo vote in favor of the motion. Motion passes unanimously. All members express their vote verbally. (4-0)

The (Inspector) requests the applicant, to put in writing that the continuation is approved so the time frame does not become an issue. The cumulative time should be watched.

(Ms. Mead) assures the Board it will not become an issue. The timeframe is all right.

1. Continued Public Hearings

Case No. 18-14 Major Modification to a Comprehensive Permit (40B) originally granted to 54 Beach Road LLC in 2008. **(As agreed upon by the Developer and the Board)**

Address: 54 Beach Road

Map 4, Lot 92

Applicant: 54 Beach Road LLC

Applicant (Mr. Paquette) approaches the podium and states it is his understanding the draft decision is complete. He feels he has satisfied all questions and comments from the Department Heads, Board of Selectmen, abutters and the Town Manager. He has reviewed the decision.

(Mr. Stucker) requests information from the Inspector. (Mr. Stucker) refers to an email in which the Inspector would need to clarify with the applicant that some finishes on the affordable units are not overlooked-relating to the last construction. (Inspector) replied it was just a reminder to make sure things are done this time around to protect the affordable units.

(Secretary) explained the (4) member Board. (Mr. Paquette) asks if it has to be a super majority. (Inspector) replies it is a modification, not an appeal of a variance or anything like that.

MOTION: Mr. Stucker made a motion to approve the agreement as provided with any minor alterations the inspector has proposed. Mr. Henderson seconds the motion.

VOTES: Ms. Tremblay and Mr. DePetrillo vote in favor of the motion. Motion passes unanimously. All members express their vote verbally. (4-0)

Continued Public Hearings (2)

Case No. 18-15 Petition for Relief – Finding by Special Permit: regarding relief to enlarge an existing non-conforming structure (deck).

Address: 534 North End Blvd.

Map 36, Lot 123

Applicant: James B. Purtell

Mr. Bill Nolan- Architect representing Mr. Purtell approaches the podium.

(Secretary) advises only a 4 member board and the applicant can wait for a (5) member board. Mr. Nolan chooses to go forward.

(Inspector) reminds everyone they can invoke the Mullins Rule.

(Mr. Nolan) explains they are seeking to maintain the current setback. He shows the current state of the property. They are seeking an extension of a non-conforming house. He explains an existing stair is deteriorating; it will be removed and replaced with a new stair to code. It will be widened by one tread. (11 inches). It will not encroach on the side setback.

(Secretary) requests if Mr. Nolan provided the Board with the proposed/required zoning analysis which usually accompanies these cases. **(Mr. Nolan)** replies he did not provide this information.

(Mr. Nolan) states his client proposes to maintain the existing deck but change the stairs. He is also proposing a new deck on the side, which the Conservation Board just passed. They are also proposing a roof deck which will increase both the height and the size of the building. However, even with the railings on the deck, it is still lower than the required height. The existing staircase is approximately 8.4 feet wide and the request it to change it to 10 feet wide.

(Secretary) confirms with the Inspector that the dimensions are correct and if the plans were reviewed. The **(Inspector)** confirms they were reviewed.

Abutters: None

(Secretary) asks if there is storage on the property. (Mr. Nolan) confirms there is an existing shed under the deck.

MOTION: Mr. Stucker made a motion to grant the application for relief by special permit for Case 18-15 at 534 North End Boulevard as the change is not significantly detrimental to the neighborhood. Mr. Henderson seconds the motion.

VOTES: Ms. Tremblay and Mr. DePetrillo vote in favor of the motion. Motion passes unanimously. All members express their vote verbally. (4-0)

2. Minutes

None

3. Correspondence and Other Board Business

None

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

None

5. Adjournment

Motion for adjournment was made by Henderson, Ms. Tremblay seconds and approved by a 4-0 vote. Meeting is adjourned at 8:35 pm.

- 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 Scheduled Public Hearing: August 28, 2018

Respectfully submitted by Teresa Mahoney, Board Secretary and accepted at the September 25, 2018, meeting of the Zoning Board of Appeals.

Accepted as Presented;



Chairperson Susan Pawlisheck

Cc: Town Clerk