



TOWN OF SALISBURY

Zoning Board of Appeals Hearing

Colchester Room @ Town Hall, 5 Beach Rd

MEETING MINUTES – PUBLIC HEARING

Hearing Date: October 24, 2017 @ 7:00 pm in the Colchester Meeting Room

Members Present: Susan Pawlisheck (Chairperson), Kevin Henderson, Joseph Stucker, Linda Tremblay.

Members Not Present: Derek DePetrillo.

Staff Present: Scott Vandewalle, Zoning Officer/Building Inspector,
Amy Kwessel, KP Law - Town Counsel

Chairperson Pawlisheck (**Chair**) called the meeting to order @ 7:07 pm.

1. New Public Hearings

- A. Case No. 17-17 Petition for Relief by Administrative Appeal:** An administrative appeal to the Building Inspector's issuance of a building permit to Harold Condon for the construction of a 12'x70' concrete pad for a mobile home at 5 Harrison Avenue.

Address: 5 Harrison Avenue

Applicant: Wayne H. and Kristine A. Harrison

Chairperson Pawlisheck (Chair) opened the case and explained there is only a (4) member board; applicant can choose to go forward or wait. The Attorney for the Harrisons agreed to proceed with (4) members.

Attorney Adam Costa (AttyCosta) introduced himself as attorney for the applicants. He explained that the Harrisons were appealing the issuance of a permit by the Building Inspector, **Scott Vandewalle (Inspector)**.

(AttyCosta) explained the basis for their objection; primarily an issue with the zoning. The piece of land being discussed here is the 4th piece that Mr. Condon had divided and has frontage on Harrison Ave. (Atty. Costa presented the original plan from 1998).

The property is located in the Outer Village Residential Overlay (R2) Zoning District, Article XIIC. Zoning Section 300-82.23.C.1 says mobile homes are prohibited. The history of the division/re-division of the land was discussed.

(AttyCosta) states the issue is more about rights to use Harrison Ave. He presented the original plan saying Harrison Ave cannot be used for frontage; Harrison Ave was not there when Mr. Condon bought the land. Private ways are owned by original developer. No transfers were found to be made to Mr. Condon. He has no right to connect to Harrison Ave. and no permission/permits granted for use for of a common driveway.

Comments:

(Inspector) gave some background on issuance of the permit. Under zoning, it is correct, no mobile home is allowed, but temporary trailers are allowed in Zone R2 per the definitions. The intent was to issue the permit for a temporary dwelling only. The permit is OK for 180 days; that was the reasoning on why it was allowed.

(Chair) asked if Mr. Condon was present; he was not.

(Inspector) presented old records that a Special Permit for access to Harrison Ave. granted, via Town Counsel advice and the Building Inspectors decision, without a recorded Appeal in March 2000.

(Chair) stated that the **(Inspector)** issued the permit only because it was 'temporary'. A temporary pad/structure is getting ready for permanent structure. The **(Inspector)** said that Mr. Condon had presented plans for (2) homes on the properties. The trailer was to be used while the first home was to be built, the occupant would transfer to the home, and the trailer would be removed to allow the second home to be built.

(AttyCosta) stated that a temporary trailer can be used for a catastrophic situation, under the bylaw, and in this case it was not a catastrophic situation.

Abutters - General discussion on temporary vs. mobile home.

Abutter #1: Mr. Condon's daughter is living in a 15 foot camping trailer on the Properties; is currently homeless.

Abutter #2: Jill Harrison, 12 Harrison Ave. Offered opinions on why daughter is homeless.

Abutter #3: the building permit asks for placement of mobile home, not a trailer, sitting on the property.

Abutter #4 asked what type of building Mr. Condon applied for; **(Inspector)** replied a cape style home.

(AttyCosta) declared there are no rights to Harrison Ave for Mr. Condon, he needs to get permission

(Chair) asked for a motion.

MOTION: Board Member Henderson moved that the appeal to rescind the building permit be approved; Member Stucker seconded.

VOTES: 4 in favor, 0 opposed; motion is approved.

- B. Case No. 17-18 Petition for Relief by Variance** from a Dimensional Regulations regarding maximum height of a structure.

Address: 62 Cable Ave.

Applicant: Arthur Allen

(Chair) reminded the applicant there is only a (4) member board.

Arthur Allen **(Applicant)** acknowledged and accepted this and the case was opened.

(Applicant) addressed the board and explained his proposal for a roof deck for 3rd floor unit. He is also looking for relief for the rail system on the deck. He declared there are other decks in the neighborhood; this deck will not restrict anyone else's views.

(Chair) asked why approval was not sought before building of home.

(Applicant) The new owner is requesting these changes.

(Chair) asked what the hardship was for the variance.

(Applicant) responded increased scenic viewing.

(Chair) asked if there are any abutters who wish to speak?

Abutter; Monica Demaris, 56 Railroad Ave., responded that her view is already blocked and she used to get light from the state park and there is now only pitch black on the street.

Ms. Tremblay; I am not in favor of extending height.

Mr. Stucker; I struggle to see the hardship. Look at the (7) questions on the application. A Variance may do minimal harm, but I do not recommend.

(Applicant); the deck is at the rear of house on marsh and not on the street side.

(Applicant) is asking for a continuance after speaking to partners.

(Chair) asked why continuance; **(Applicant)** I've changed my mind.

MOTION: Board Member Stucker moved to deny the Petition for a Variance; Board Member Tremblay seconded.

VOTES: 4 in favor, 0 opposed. Motion to deny the Variance is approved.

C. Case No. 17-19 Petition for Relief by Variance: Dimensional Front Yard Setback

Address: 100 Elm Street

Applicant: Christopher DeLuca

(Chair) reminded the applicant there is only a 4 member board.

Mr. Knowles, representing Mr. DeLuca **(Client)**, acknowledged this and the case opened.

Mr. Knowles discussed existing wetlands and the history with Conservation Dept. and buffer zone; they wanted more setback of the building from the wetlands requiring the building to move forward into the front setback and necessitating this Variance.

Mr. Knowles discussed storm water and the proposed structure, mentioning this is the "Old Elm Street" area of town.

No abutters were present.

MOTION: Linda Tremblay moved to grant the variance due to soil conditions; Kevin Henderson seconded.

VOTES: 4 in favor, 0 opposed. Motion carries.

2. Continued Public Hearings

A. Case No. 17-15 Petition for Relief by Special Permit: extension/alteration of a pre-existing, non-conforming structure.

Address: 10 Beach Rd

Applicant: Thomas & Susan DeFronzo **(Owners/Applicants)**

(Chair) stated that (1) this is a continuance of a previously opened case, (2) that Town Counsel was present and (3) it is only a 4 member board.

(AttyCornetta), representing the DeFronzo's, acknowledged this and requested that the case be opened.

(AttyCornetta) presented a rendering of the project to be installed at 10 Beach Road; mentioning the brief sent to members. The property is in a commercial zone and they are seeking relief under MGL Ch. 40A Section 6.

(Inspector) stated his opinion that they are not entitled to relief as this is an unpermitted, unlawful Use violation (dwellings in lieu of permitted motel use) and MGL Ch40A, Section 6 Statute of Limitations does not protect and unlawful use.

(Atty Cornetta) presented 4 separate opinions and discussed 2 cases concerning zoning examples representing his opinion that the Board, under the 2016 revisions to Ch40A, could allow a Special Permit for a pre-existing, non-conforming structure as is this case.

"We are entitled to relief under 40A, section 6 and it is not more substantially detrimental to the neighborhood. The applicants believe they are eligible for zoning relief."

(AttyCornetta) now requests that the public hearing be closed and that the Board act favorably upon the zoning application.

(Town Counsel) stated that she agrees with **(Atty Cornetta)** on 90% of his presentation; however 'use' and 'structure' are being confused. The 2016 changes only addressed non-conforming 'structures' and not uses;

"Here we have a 'use' problem. The requested use is not allowed in the Zoning District, and has never been allowed without a variance. There is no variance on record. The Zoning bylaw does not allow a 'use' variance. They cannot expand, alter or enlarge their use under Section 6. That is what they are attempting to do".

(AttyCornetta) responded that there is no differentiation between use and structure.

(Chair) asked Town Counsel if the Board had the authority to vote on the application as it does not fit a special permit.

(Town Counsel) advised the board to close the vote today and a decision can be made within 90 days.

(AttyCornetta): "We would like a vote tonight; we urge you to vote to approve".

(Owners/Applicants) stated his confusion as to its current use.

(Town Counsel) responded that the previous owner in 1984 got a permit for a 3 unit hotel on the use and occupancy permit. This is the last valid permit.

(Owners/Applicants) stated he bought the property in 2013; it was always advertised as residential property, prior building inspector gave permit as 4 unit property. He put in a 2nd egress; no mention of hotel/motel.

(Owners/Applicants) stated they answered all requests made, offering 3 beautiful townhouses; she respects board viewpoints.

(Chair) responded that the proposed building is beautiful; however the Board has to follow zoning bylaws. When not sure, 'we go to town counsel'. The Board went through all documents and was

advised by the Town Attorney that the Board does not have authority to approve. She suggested looking at a variance but certain criteria has to be met.

Ms. Tremblay stated the clients had good intentions when they purchased the property. Do they have recourse? Can they go to the planning board?

(Town Counsel): they can look at re-zoning.

Mr. Henderson: 2012 permit said residential apartments; all signed off as apartments?

(Town Counsel) stated it is not the original permit that created the apartment.

(Chair) asks for a motion.

MOTION: Ms. Tremblay motions to deny the application for 10 Beach Road for a Special Permit; Mr. Stucker seconded.

VOTES: Ms. Pawlisheck, Mr. Stucker, and Ms. Tremblay in favor, Mr. Henderson opposed. Motion failed.

MOTION: Mr. Henderson makes a motion to approve the Special Permit.

(Chair) asks for a second; no one seconds the motion. Motion fails.

(Chair): The motion to pass failed; the motion to deny failed.

(Chair): Asks town Counsel how to proceed.

(Town Counsel): stated that the Board will need to proceed. The Board made a motion to deny the Special Permit and then to approve the Special Permit. Neither one passed; therefore Town Counsel will draft a decision that the motion failed. The application was denied by the second motion.

(Chair): stated that Mr. Henderson's motion has to be seconded to make it official and asks Mr. Henderson to again make a motion.

MOTION: Mr. Henderson made a motion to approve the Special Permit. Mr. Stucker seconds the motion.

VOTES: Ms. Pawlisheck, Mr. Stucker, Ms. Tremblay vote in opposition, Mr. Henderson votes in favor. Motion fails.

B. No. 17-16 Petition for Relief by Variance: Front setback dimension.

Address: 15 Second St

Applicant: Stephen Spaulding & Helen Mahan

(Chair) stated that 4 members are present however Ms. Tremblay has recused herself; therefore there are only 3 voters, a decision cannot be made as it requires 4 votes.

(Town Counsel) explained that Board Member Tremblay has a presumed conflict as a direct abutter. The conflict can be waived by the Board of Selectmen. Ms. Tremblay would have to serve a disclosure/put in writing under ethics law. The other missing member is "just absent" no conflict.

(Town Counsel): this will happen again at next meeting (the Chair is unable to make the next meeting).

Mr. Stucker stated that previously one member of the BOS sat on Board of Appeals for an interim period.

(Inspector) An associate member has to be appointed by the Town Manager; It can be anyone in town.

Applicant/Owner wanted clarification if it would be the same rule if asking for variance and not a finding?

(Chair) You need a quorum vote of 4 for all Petitions.

(Chair) suggested a special meeting for this case as the applicant has been to prior meetings; not fair.

She suggested Monday, 11/6/17 @ 7PM, all members indicated that they could attend. The Board will work diligently to get a quorum.

MOTION: (Chair) made a motion to continue this case to November 6, 2017 @7PM. Mr. Henderson seconds the motion.

VOTES: Ms. Pawlisheck, Mr. Stucker, Ms. Tremblay and Mr. Henderson approve the motion to continue this case. Motion passes 4 to 0.

(Chair) asked if any pointers from Town Counsel?

(Town Counsel) replied that votes have to be verbal, not just raising a hand. This is in the statutes.

A. Minutes

No minutes were presented for review and approval

B. Correspondence and Other Board Business

No correspondence was presented for review

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

There were no items brought forth for review

D. Adjournment

Motion for adjournment was made by Mr. Stucker and approved by a 4-0 vote.

Meeting is adjourned at 9:20pm.

- 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, November 14, 2017

Special Hearing for Case 17-16: Monday, November 6, 2017

Respectfully submitted by Teresa Mahoney, Board Secretary and accepted at the 12/12/17
meeting of the Zoning Board of Appeals.

Accepted as Presented;

Susan M. Pawlischeck Date 12/12/17
Chairperson Susan Pawlischeck

Cc: Town Clerk