



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

**MEETING MINUTES- PUBLIC HEARING**

**Hearing Date: February 28, 2023 @ 7:00 pm**

**Members Present:** Derek DePetrillo (Chair), John Schillizzi (Vice Chair), Drew Dana, CJ Fitzwater, and Stephen Rossetti,

**Additional Persons Present:** Scott Vandewalle, Building/Zoning Commissioner and Jennifer Geary ZBA Admin

Derek DePetrillo called the meeting to order at 7:01pm.

**Continued Public Hearings**

**Case No. 22-000032 Petition for Relief – Finding** to request to remodel and extend an existing, non-conforming structure.

**Address:** 172 North End Blvd.

**Map:** 33, **Lot:** 87

**Applicant(s):** Timothy Beauregard

No one was present to represent the project. Chairman DePetrillo stated the applicant's representative had sent an email stating they might be withdrawing. Recommended that they continue to the next meeting to allow the Applicant's representative to withdraw in person.

**MOTION:** Mr. Fitzwater makes a motion continue Case No. 22-000032 at 172 North End Blvd. to March 14, 2023. Mr. Schillizzi seconds the motion.

**VOTES:** Mr. Rossetti, Mr. Schillizzi, Mr. Dana, Mr. Fitzwater, and Chair DePetrillo, vote in favor of the motion. Members express their vote individually and verbally. 5 in favor, 0 opposed.

**Case No. 22-000034 Petition for Relief – Administrative Appeal** to reverse the Building Commissioner's determination that a violation has occurred.

**Address:** 122 Rabbit Rd.

**Map:** 18 **Lot:** 124

**Applicant(s):** Joanne & Robert Tindle, Jr.

Attorneys Robert Scarano and Richard Kallman were present to discuss the appeal. Attorney Scarano stated that he believes the violation notice should be overturned as the violations in question are over 20 years old. Attorney Scarano stated that the Statute of Repose prevents the pursuit of zoning violations that are more than six years old. Constructing and utilizing the building

in question was a matter of right for the property owners. The allegations can't be substantiated, as the inspector is guessing. Attorney Scarano informed the Board that the matter came to the inspector's attention because the property went up for sale and buyers doing their due diligence requested information regarding the property. He stated 40 x 60 structure on the property was permitted and has been in use for 20 years. The green structure was erected without a permit, but both buildings are protected by the Statute of Repose. Attorney Scarano explained that the third issue in the Violation Notice was that the property owners were not in compliance with Site Plan Review from 2000, which the Building Inspector determined with the use of aerial photographs. Attorney Scarano stated that Site Plan Review was only advisory in 2000 and no conditions are in the site plan decision because it was an as of right project, and it was an informality to go before Planning. He believes the Inspector's decision was not supported by fact or law. He reviewed a Statement of Facts previously sent to town counsel. Mr. Vandewalle provided the background of discovering the violation, stating that a review of the property records determined that there was a signed Site Plan Agreement which was issued in 2000, as well as a site plan drawing signed off on by the Planning Board. He noted that some items on the site plan were completed. A requirement in the agreement was that in order for a Certificate of Occupancy for the main building to be issued, they had to obtain a Certificate of Completion from Planning. No record that either Certificate was issued could be found. A large retention pond was supposed to be constructed per the Site Plan Agreement, but from the aerials, and from observing the property from the street, it does not appear to have been constructed. Based on those determinations, the property owners did not complete the Site Plan Agreement, which is an outstanding zoning violation. He also advised that the Statute of Repose applies to structures or use. He is not asking anything be done with the structure. He is also not asking anything be done with the use; however, it did expand into the adjacent properties without a Special Permit. The wetlands are on the back side of the property and have nothing to do with the retention pond. He also noted that Building Code issues are not affected by the Statute of Repose. The retention pond is not a structure or a use so the Statute of Repose does not apply. The Town just wants the property owners to comply with the Site Plan from 2000 as agreed and written. Mr. DePetrillo asked what was completed. Mr. Vandewalle replied that the building was constructed, but it appears neither a Certificate of Completion or a Certificate of Occupancy were issued. The retention pond was not completed, parking areas were not done as shown, and so stormwater retention was not completed as agreed. The green building was not part of the Site Plan, and was constructed later. The expansion of the use into the adjacent properties was not considered on the 2000 Site Plan and would have required a revisit of the site plan to expand the use. Mr. DePetrillo confirmed that some things were completed from the Site Plan and Mr. Vandewalle agreed. Mr. Fitzwater asked how records were kept in 2000, if they were digital at all. Mr. Vandewalle replied it was all paper files. Mr. Fitzwater then asked if any documents ever come up missing out of the files. Mr. Vandewalle explained that the Certificates of Occupancy were done in triplicate during that time, and were put on file in multiple offices. There is plenty of Certificates from that time frame, but nothing could be found for this property. Attorney Scarano rebutted, stating the Statute of Repose is clearly written, and the Building Official's ability to issue a Zoning Violation is prohibited. Can't go past 6/10 year statute. He claimed the retention pond has been constructed. There has been no site visit. The pond may not be exactly where the site plan shows. He also advised that Mr. Tindle signed nothing with the Planning Board showing such



conditions. Town Meeting made necessary Certificates of Occupancy and Certificates of Compliance after 2000. He stated he reviewed the minutes from 2/9/2000, and no conditions were put on the project. The retention basin is not a zoning violation as there is nothing in the Zoning Bylaws regarding retention basins. Attorney Scarano stated the retention basin is there accepting water, but no site visit has occurred to confirm that. With regard to the expanded use, the uses were there before Mr. Tindle got the permit for the building, which is going back 30 years. The parking issues were there long before he got permit for building. Attorney Scarano stated he wants a site visit to make a factual determination regarding the retention basin. He also stated that the Wetlands Protection Act doesn't apply to this site. There is no wetland order, nothing recorded that would prohibit him from wetland work. There was an issue, and DEP stepped in and gave Certificate of Completion and overrode the local commission. Mr. Rossetti confirmed that the applicant is saying things weren't completed, but that the statute of repose prevents pursuing the violation. Attorney Scarano replied that was the case. However, they agree with premise, but disagree that the project is incomplete. They have the permit card for the structure showing all inspections were completed. However, if any aspect of the project were incomplete, the Statute of Repose is in effect. Mr. Dana asked if it was Attorney Scarano's opinion that the site plan review is advisory. Attorney Scarano replied it was. Mr. Dana noted that elements from it were constructed. Attorney Scarano agreed. Mr. Fitzwater asked what year were Certificates of Completion and Certificates of Occupancy started being required. Mr. Vandewalle replied he was not sure for Site Plan Review, but the building code has required Certificates of Occupancy since 1978. Site plan review section of the Zoning Bylaw was created in 1996. Mr. Fitzwater asked if at the time this project was being done, were such Certificates required? Mr. Vandewalle replied he believes the Certificate of Completion was, and the Certificate of Occupancy was according to Building Code. Planning Director Lisa Pearson was working for town then and would know for sure with regards to the Certificate of Completion. Mr. DePetrillo commented that the applicant states the basin is there. Mr. Vandewalle stated it is the lead point of contention. He also noted he hadn't heard anything about the applicant wanting a site visit, but he's happy to do one with the Planning Department and the Town Engineer. They would appreciate the opportunity. Mr. Dana commented that aside from the basin, it appears that the rest of the zoning violation stems from documentation issues. Mr. Vandewalle stated they don't have the permit card with the inspection sign-offs that Attorney Scarano is referring to. There were no occupancy permits or certificates of completion in the file, so the assumption is they weren't created. Mr. Dana asked if they could just be missing. Mr. Vandewalle replied if that were the case, it's odd that both departments are missing the same documentation. Attorney Scarano advised that a site visit was requested in written correspondence to the Board. Mr. DePetrillo suggested the applicants share the documents they have with the Town. Attorney Kalman stated he was hired for the sale of the property. He did the research and looked through Town files. There was no contract, just a plan, and minutes approving the site plan. He also asked that the Violation Notice be removed from the Registry of Deeds. Mr. DePetrillo asked Mr. Vandewalle if he is amendable to a site visit and document review. Mr. Vandewalle replied he was, and that he'd like the site visit to be with Town Engineer Joe Serwatka and the Planning Department. Mr. DePetrillo asked about lifting the violation from the Registry. Mr. Vandewalle explained recording the Violation is done as concurrently as possible with submitting the Notice, as required by Zoning. Once the violation has been resolved,

the letter can be retracted and removed from the Registry, which has been done a number of times on other matters. Mr. DePetrillo asked if removing it would affect the violation? Mr. Vandewalle explained that the violation would still be out there, but record of it would not be on the title, and doesn't cure any concerns. Mr. DePetrillo asked if they can sell the property once the violation is off the title. Mr. Vandewalle replied that that's the risk. Mr. DePetrillo asked if a site review is required within the initial 10 days after notice of violation. Mr. Vandewalle replied that it asks for the opportunity to conduct a site walk with the applicant to see what is going on. If not done he has the right and ability to take additional action. Mr. Scarano suggested that there's usually a hearing before a notice goes on the title. Attorney Kallman advised that there is correspondence from him prior to the expiration of 10 days stating that the issues would be addressed, however the violation was still recorded. Mr. DePetrillo recommended continuing the hearing to allow for the exchange of documents, and a site visit. Attorney Scarano agreed. Mr. Dana suggested having Town Counsel weigh in.

**MOTION:** Mr. Dana makes a motion to continue Case No. 22-000034 at 122 Rabbit Road to March 14, 2023. Mr. Rossetti seconds the motion.

**VOTES:** Mr. Rossetti, Mr. Schillizzi, Mr. Dana, Mr. Fitzwater, and Chair DePetrillo, vote in favor of the motion. Members express their vote individually and verbally. 5 in favor, 0 opposed.

### **Minutes**

January 24, 2023 Meeting Minutes

**MOTION:** Mr. Schillizzi makes a motion to approve the January 24, 2023 meeting minutes as written. Mr. Fitzwater seconds the motion.

**VOTES:** Mr. Rossetti, Mr. Schillizzi, Mr. Dana, Mr. Fitzwater, Mr. Johnson and Chair DePetrillo, vote in favor of the motion. Members express their vote individually and verbally. 5 in favor, 0 opposed.

February 14, 2023 Meeting Minutes

**MOTION:** Mr. Fitzwater makes a motion to approve the February 14, 2023 meeting minutes as written. Mr. Rossetti seconds the motion.

**VOTES:** Mr. Rossetti, Mr. Schillizzi, Mr. Dana, and Mr. Fitzwater, vote in favor of the motion. Chair DePetrillo abstains. Members express their vote individually and verbally. 4 in favor, 0 opposed.

### **Correspondence and Other Board Business**

**Zoning regulations update** – Mr. Schillizzi updated the Board, stating they are close to a draft. Mr. Vandewalle suggested including rules around required number of votes for findings, appeals, etc.



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

**Adjournment**

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.

**MOTION:** Mr. Fitzwater makes a motion to adjourn the meeting. Mr. Schillizzi seconds the motion.

**VOTES:** Mr. Rossetti, Mr. Schillizzi, Mr. Dana, Mr. Fitzwater, and Chair DePetrillo, vote in favor of the motion. Members express their vote individually and verbally. 5 in favor, 0 opposed.

Respectfully submitted by Jen Geary, Board Secretary and accepted at the March 28, 2023 meeting of the Zoning Board of Appeals.

Accepted as Presented:



Chairperson, Derek DePetrillo

Cc:

Town Clerk