



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

MEETING MINUTES- PUBLIC HEARING

Hearing Date: June 13, 2023 @ 7:00 pm

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

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

Derek DePetrillo called the meeting to order at 7:00pm.

Continued Public Hearings

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.

Attorney Robert Scarano was present to discuss the appeal. He reviewed aerial photos of the property with the Board. He summarized his arguments to for reversing the Building Commissioner's determination, reviewing the Statute of Repose under 40A sec 6 and 7 which he stated bars enforcement. He also argued the Building Inspector didn't have the authority. Mr. DePetrillo asked Attorney Scarano to elaborate on whether the detention basin is viewed as a structure Attorney Scarano replied that at the site visit they showed the detention basin existed. He also noted that he had previously provided Planning Board minutes showing the basin couldn't go where it was noted on the plan, and the applicant was given permission to relocate it during the meeting and the discussion is in the Planning Board minutes. Mr. DePetrillo noted that the Notice of Violation was removed from the title, and asked what the status of the property was. Attorney Scarano replied that they plan to sell the property now that there is a clear title. The new owner will go back to Planning.

MOTION: Mr. Fitzwater makes a motion to reverse the Building Inspector's determination that a violation has occurred in Case No. 22-000034 at 122 Rabbit Road. Mr. Schillizzi seconds the motion.

VOTES: Mr. Fitzwater and Mr. Schillizzi vote in favor of he motion. Mr. Rossetti, Mr. Dana, and Mr. DePetrillo, vote against the motion. Members express their vote individually and verbally. 2 in favor, 3 opposed.

Case No. 23-000006 Petition for Relief Finding to request to allow a non-conforming structure

Address: 172 North End Blvd.

Map: 33, Lot: 87

Applicant(s): Timothy Beauregard

Mr. DePetrillo advised that he and Mr. Dana had completed Mullins forms with regards to this hearing. Attorney Douglas Deschenes of Finneran and Nicholson represented the applicants. The applicants, Matt Steinel of Millennium Engineering, and Chris Crump of CWC Designs were also present. Attorney Deschenes explained that the Board needs to determine whether the proposed project is more detrimental to the neighborhood than what is existing, and that the Boards needs to consider the whole neighborhood. The proposed structure improves setback non conformities, it will be on pilings, and meets flood requirements. It will also improve aesthetics, value, and tax revenue. He noted that any detriments affect one neighbor, due to potential shading, and that the neighborhood in question includes not just direct abutters, but also Salisbury Beach as a whole. Attorney Deschenes provided the Board with a petition signed by other neighbors voicing support for the project. He reviewed the Letter of Opposition submitted by the abutters at 174 North End Blvd and noted most of the concerns only affect the neighbors at 174 North End Blvd. He noted that the structure as proposed is under height limits, and he disagrees with the assertion that the structure shouldn't be allowed the 35 feet of height if it isn't going to meet the 10 foot side yard setbacks. The structure's footprint will have an overall increase of 65 square feet, while the square footage of the portions within the setbacks will be reduced. Environmental concerns noted in the opposition will be addressed with the Conservation Commission. He stated that they will be able to maintain and build the structure without encroaching on the neighbor's property. There will be no significant impact on the shading. Mr. Johnson advised that the space required to use pump jacks will impede on the property line during construction. Attorney Deschenes advised that the site plan had been revised and apologized as he didn't know the updates hadn't gone to the Board yet. They were able to pull back the structure and the new side set back is 3 feet. Mr. Dana asked what the setback to the building, not including stairs, on the other side was. Mr. Steinel replied around 4.5 feet. Mr. Rossetti questioned whether they could rotate the building to meet the side setbacks. Mr. Crump stated doing so would change the whole design. Roof lines, views, windows, etc. would all be affected and they would have to redesign everything. Homeowner Tim Beauregard stated he met with the abutters at 174 North End Blvd., and after the first meeting, they were willing to take down the existing house, the abutters had no issue with the new house going closer to the street, and the new house was designed based on that conversation. Matt Steinel added that there would be environmental impacts to rotating the structure including impacts to vegetation. Mr. Schillizzi expressed concern that the proposal lacks sufficient parking. Mr. Steinel replied it will have a long driveway, and there will be substantial parking along the front. The pre-existing 14' of parking area will be maintained, as well as the driveway. Mr. Crump provided photos of the neighborhood and noted that numerous structures within a quarter mile of this property have non-conforming setbacks. The project fits in with the fabric of the neighborhood. Attorney Ben

Taylor of Mead Talerman and Costa, representing the Towers of 174 North End Blvd., noted that 3 feet isn't much more than 2.7 feet so their points remain the same, even with the new setback. They are mainly concerned with the mass of the structure and reviewed the side elevation overlays of what is existing versus proposed. The Towers feel that the side setbacks are not enough to offset the height increase. He also noted that the Conservation Commission might have changes that will change the design. They are also concerned that during construction workers may have to enter the property, and debris could blow onto the Towers' property. A 10 foot setback would create a buffer and alleviate many of those concerns. Mr. Crump stated the pile driver won't have problems with avoiding the abutting property, and they will have to figure out taking down the house without entering the other property, but it has been done successfully in similar situations. Mr. DePetrillo asked Attorney Taylor how the project is more detrimental to the whole neighborhood as opposed to just the one abutter. Mr. Taylor replied he doesn't have exact figures, and noted that in the photos the applicant provided, the houses didn't appear as close together as what is proposed here. Mr. Vandewalle advised that there are two pre-existing non conformities that need to be addressed the structure is a two family in a single family zone. Tearing down the structure will be considered an abandonment of that use unless it is approved by Zoning. Attorney Deschenes stated that they are not asking to change that use and it will be a two family after it is built. Abutter Frances Bevilacqua of 168 North End Blvd. stated he has no problem with the project. It will make the neighborhood better, and increase values. Jim Baskin, of 178 North End Blvd. stated it will change the texture of the neighborhood and he's concerned about setting a precedent to move houses closer. Elaine Salie of 173 North End Blvd doesn't see the project as a detriment. The existing structure is in bad shape, the new structure will be an asset and is typical of what is being built. Joe Tower of 174 North End Blvd. questioned whether the supporters in the provided letter are all abutters who have standing. He stated he has no problem with rebuilding, he just feels they should abide by setbacks. All the shading will fall on his property. Architect Rayford Law out of Marblehead spoke for the Towers at 174 North End Blvd. Mr. Law provided mock-ups of the expected shadowing. Mr. Tower asserted that the proposed structure doesn't fit with the rest of the neighborhood. Attorney explained that per the bylaws, pre-existing non conformities can be extended provided they are not significantly more detrimental to the neighborhood. The pre-existing non-conformities will be reduced with the new structure assertion. With regards to the shadowing, Attorney Deschenes noted that the shadowing between the buildings the Towers are concerned about is likely already happening with the existing structure. Resident Patricia Kennedy of 228 North End Blvd. voiced support for the Towers and was in favor of enforcing the 10 foot setback. Resident Donna Lamontagne of 226 North End Blvd. also voiced support for the Towers. Mr. Dana asked about the logistics in demolishing the encroaching portion of the existing home without trespassing onto the neighbor's property. Mr. Vandewalle stated it wasn't sure what the mechanics would be. It wouldn't be a code issue and would need to be sorted out between the contractor and home owners. Mr. Dana asked if since the agenda only mentions the non-conforming structure, would clarifying the use in the finding be sufficient? Mr. Vandewalle replied it would be sufficient.

MOTION: Mr. Fitzwater makes a motion to approve Case No. 23-000006 at 172 North End Blvd. as the requested extension or alteration of the pre-existing non-conforming use and/or structure is not substantially more detrimental to the neighborhood. Mr. Dana seconds the motion.

VOTES: Mr. DePetrillo, Mr. Rossetti, Mr. Dana, and Mr. Fitzwater vote in favor of the motion. Mr. Schillizzi opposed the motion. Members express their vote individually and verbally. 4 in favor, 1 opposed.

New Public Hearings

Case No. 23-000009 Petition for Relief – Finding to request to allow a non-conforming use or structure.

Address: 42 Commonwealth Ave.

Map: 36 **Lot:** 75

Applicant(s): Shiv Shrestha, International Capital Management.

The Representative, Matt Steinel of Millennium Engineering, was present to discuss the project. They are requesting a Finding to extend the existing non-conforming use, and existing non-conforming setbacks. The existing structure is a 2-family home, with the following non-conforming setbacks: 2.2 feet on the side, 3.9 feet in the front, and 2.9 feet in the rear. They are proposing an interior renovation and plan to add a floor and keep the existing setbacks. They will tear off the existing landing and stair in the front, and will construct a new set on the right which will be slightly smaller, and will pull the structure back onto the property. The project is also in front of the Conservation Commission currently. Mr. Steinel reviewed the existing and proposed interior layout. Mr. Schillizzi asked what the height of building will be. Mr. Steinel replied 34 feet to the peak. Mr. Fitzwater asked if the structure is currently in use. Mr. Steinel replied the current owner purchased it recently, and he believes it was occupied recently. Mr. Dana asked if they were not changing the footprint. Mr. Steinel replied that it was remaining the same with the exception of changing the location of the landing. Mr. Schillizzi asked about parking. Mr. Steinel replied that there are driveways on right and left. Mr. Vandewalle advised that the structure is a 2 family, and it is not in a flood zone.

MOTION: Mr. Fitzwater makes a motion to approve Case No. 23-000009 at 42 Commonwealth. As it is not substantially more detrimental. Mr. Schillizzi seconds the motion.

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

Case No. 23-000010 Petition for Relief – Administrative Appeal to reverse the Building Commissioner's determination that a violation has occurred.

Address: 2 Folly Mill Rd.

Map: 13 **Lot:** 101

Applicant(s): Craig & Alicia MacMillan

Mr. Fitzwater made a motion to take Case No. 23-000010 at 2 Folly Mill Rd out of order. Mr. Dana seconded the motion. Mr. DePetrillo, Mr. Rossetti, Mr. Schillizzi, Mr. Dana, and Mr. Fitzwater vote in favor of the motion. Members express their vote individually and verbally. 5 in favor, 0 opposed

Applicants Alicia and Craig MacMillan were present to discuss the appeal. Mr. MacMillan stated they are not running a commercial business out of the residence. Mr. MacMillan explained that he runs a mobile repair business, and that any repair activity at the house would be helping out a friend. Ms. MacMillan stated they did let the Building Inspector know the garage was for personal use. Mr. Vandewalle explained the violation was brought to his attention by two neighbors and a Selectman and included complaints about noises. Neighbors provided photos of the activity, including one of a truck from Peabody being dropped off by a flatbed. Mr. Vandewalle contacted the company named on the truck and the contractor confirmed it had been dropped off to be fixed. Abutter Kim Ingalls of 12 Elmwood St. stated that the noise from the garage was loud and occurred all winter. She noted she had seen Facebook posts from the MacMillan's about losing his garage in Lynn. The posts mentioned needing a garage with a large opening as he did a lot of work on buses. She also stated that she noticed vehicles started coming at night after the violation notice was sent out. She offered recordings from inside home should the Board want to hear them.. Abutter Cliff Taylor of 17 Elmwood St. Stated that he doesn't see buses, and doesn't believe it's a commercial business. Maybe he fixes a friends car. Mr. Taylor explained that Mr. MacMillan fixed his own car, and came over to his house to do it. He hasn't had any issues. Ms. Ingalls added that the MacMillan's didn't get final inspections for the garage. She also noted that the business is licensed and registered to 2 Folly Mill Rd. Abutter Jennifer Hale of 10 Elmwood St, stated that they are clearly running a repair garage. Abutter Karen Taylor of 17 Elmwood state she works from home and hasn't been disrupted. She doesn't see him at home. Mr. DePetrillo asked if it's a commercial business. Ms. Taylor replied that she doesn't see this activity. Ms. MacMillan advised that they had to change the mailing address of the business because the Lynn garage was demolished, and the mail has to go somewhere. Mr. DePetrillo asked about the circumstances around the truck being brought in on a flatbed. Mr. MacMillan explained that the truck broke down close by and they asked if it could be dropped off. Mr. DePetrillo asked about photos of a bus at the property. Mr. MacMillan replied that it belonged to a family friend who was visiting. Mr. Dana asked if since he's a mobile mechanic there should never be another car at the property being worked on, and since the garage is for personal use, business tools are not stored in the garage, he isn't working for a client in the garage. Mr. MacMillan replied his tools are stored there, but he doesn't do work for clients in the garage. Mr. Vandewalle advised that even if he is fully mobile, it is still considered a home based business, and the MacMillan's should complete an application for a special permit for a home based business. The Zoning Board can then set hours, etc. Mr. Dana asked what kind of penalty are the MacMillans facing. Mr. Vandewalle replied that theoretically, fines are \$50 a day, and they can be taken to court. The goal of the Notice was to get everyone in the same room to sort it out. Mr. Fitzwater asked if there is currently a fine being assessed. Mr. Vandewalle replied there was not. Mr. Fitzwater asked what penalty are they facing if their petition is denied. Mr.

Vandewalle explained there would be no penalty. The matter would be closed until another violation is demonstrated. Mr. Dana advised the applicants that it would behoove them to apply for the special permit. Abutter Kim Ingalls of 12 Elmwood St. commented that she just doesn't want him fixing cars at the property on a day to day basis.

MOTION: Mr. Fitzwater makes a motion to uphold the Building Inspector's determination, Case No. 23-000010 at 2 Folly Mill Rd. and as a Special Condition, recommended the applicant apply for a Special Permit for a home based business. Mr. Rossetti seconds the motion.

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

Case No. 23-000011 Petition for Relief – Special Permit to request to allow an auxiliary apartment

Address: 1 Congress St.

Map: 11 **Lot:** 61

Applicant(s): Richard True.

Applicant Richard True was present to discuss the project. Mr. DePetrillo advised the Board that Mr. Schillizzi abstained from the Planning Board vote on the matter so he can vote in the Zoning Board hearing. Mr. DePetrillo questioned whether they had received approval from the Board of Health. Mr. True stated they did receive an approval on the the new septic system from the Board of Health.

MOTION: Mr. Schillizzi makes a motion approve Case No. 23-000011 at 1 Congress St. The use requested is listed in the Table of Use Regulations as a special permit in the district for which the application is being made. The requested use is essential and/or desirable to the public convenience and welfare. The requested use will not create undue traffic congestion or unduly impair pedestrian safety. The requested use will not overload any public water, drainage or sewer or other municipal system so as to adversely affect health, safety and general welfare of the Town. All special regulations for the use, as set forth in the Special Permit Table, or within the Bylaw section listing requirements for this Permit, have been fulfilled and completed. The requested use will not impair the integrity or character of the district or adjoining districts so as to adversely affect health, safety and general welfare of the Neighborhood. The requested use, by its addition to a neighborhood, will not cause an excess of that use that could be detrimental to the Neighborhood. Mr. Rossetti seconds the motion.

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

Minutes

May 23, 2023 Meeting Minutes –Mr. DePetrillo advised the minutes have not been issued for review yet.

Correspondence and Other Board Business

- Zoning Board of Appeals Rules & Regulations update - Mr. Schillizzi stated he is working on it with Mr. Dana and reviewed some of the items they are working on.
- Scott offered a clarification on what constitutes an abutter. An abutter is any property within 300 feet, as defined by Chapter 40A. Inside that 300 foot radius has standing to be aggrieved, anyone outside the radius need to demonstrate why they have a right to be aggrieved.

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. Rossetti makes a motion to adjourn the meeting. Mr. Schillizzi seconds the motion.

VOTES: Mr. DePetrillo, Mr. Rossetti, Mr. Schillizzi, Mr. Dana, and Mr. Fitzwater 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 July 25, 2023 meeting of the Zoning Board of Appeals.

Accepted as Presented:



Chairperson, Derek DePetrillo

Cc: Town Clerk