



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

MEETING MINUTES- PUBLIC HEARING

Hearing Date: December 14, 2021 @ 7:00 pm

Members Present: Derek DePetrillo (Chair), John Schillizzi (Vice Chair), Drew Dana and C.J. Fitzwater (Alternate)

Additional Persons Present: Scott Vandewalle, Building/Zoning Commissioner and Kate White ZBA Admin

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

New Public Hearing

Case No. 21-26 Petition for Relief – Special Permit to request the allowance of proposed accessory apartment above existing garage.

Address: 20 Cushing Street

Map: 17, **Lot:** 70

Applicant(s): Darren Dow

Applicant Darren Dow is seeking relief by special permit to allow for the construction of proposed accessory structure above existing garage. The accessory apartment will be 874 square feet.

MOTION: Mr. Dana makes a motion to approve the request for a Special Permit for Case No. 21-26 at 20 Cushing St as the requested use will not create undue traffic congestion or unduly impair pedestrian safety; the requested will not overload any public water, drainage or sewer to adversely affect the health, safety and general welfare of the Town; the requested use will not impair the integrity or character of the district so to adversely affect health, safety and general welfare of the neighborhood; the requested use will not cause an excess of that use that could be detrimental to the neighborhood. Mr. Fitzwater seconds the motion.

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

Case No. 21-28 Petition for Relief – Finding to allow for the extension/alteration of a pre-existing, non-conforming structure for the proposed accessory apartment above existing garage.

Address: 20 Cushing Street

Map: 17, **Lot:** 70

Applicant(s): Darren Dow

Applicant Darren Dow is seeking relief by finding to allow for the extension/alteration to pre-existing, non-conforming structure for the construction of proposed accessory structure above existing garage. The accessory apartment will be 874 square feet.

MOTION: Mr. Schillizzi makes a motion to approve the request for a Finding for Case No. 21-28 at 20 Cushing St, as the accessory apartment will not be substantially more detrimental to the neighborhood. Mr. Dana seconds the motion.

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

Case No. 21-29 Petition for Relief – Variance to request relief from front yard setback requirements for the construction of proposed single family home.

Address: 26 Cushing Street

Map: 17, **Lot:** 211

Applicant(s): MTI Properties, C/O Lisa Mead of Mead, Talerman, and Costa, LLC

Representing the applicant is Ben Taylor of Mead, Talerman, and Costa, LLC and Matt Steinel of Millennium Engineering. 26 Cushing Street is currently a vacant lot and due to soil conditions and the shape of this lot, the applicant is requesting relief from the front-yard setback requirement to construct the proposed single family home with a 25.5' front yard setback where a 40' setback is required. The proposed structure meets all other dimensional requirements.

MOTION: Mr. Dana makes a motion to approve the request for a variance for Case No. 21-29 at 26 Cushing St based on the soil conditions, topography and shape of the lot. Mr. Schillizzi seconds the motion.

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

Case No. 21-30 Petition for Relief – Administrative Appeal to reverse the Building Commissioners decision to deny the issuance of a building permit.

Address: 159 Beach Rd

Map: 28, **Lot:** 1

Applicant(s): Larkin real Estate Group, Inc

Representing the applicant is Attorney Donald Borenstein of Johnson and Borenstein, LLC. Attorney Donald Borenstein clarifies that the applicant is not contesting or appealing so much of the Building Commissioner's decision that determined that the Inclusionary Zoning requirements of Article XIII, §300-75A of the Bylaw apply to the applicant's project. The applicant is only contesting and appealing that Site Plan Review is required.

The following was presented to the Board and is included in the Board's record:
159 Beach Road is approximately .72 acres in size.

On September 22, 2021, the Planning Board endorsed a plan entitled “Plan of Land (Approval Not Required)” prepared by Warren A. Wagner, dated September 8, 2021, which plan is recorded in the Essex South District Registry of Deeds in Book 40318, Book 371 (the “ANR Plan”) and divided 159 Beach Road into fourteen numbered Lots. This matter involves Lot 9 on the ANR Plan (“Lot 9”).

A plan entitled “Plot Plan”, prepared by Civil Design Consultants, Inc., dated November 9, 2021 was filed with the Application and shows the dwelling and related improvements to be constructed on Lot 9.

The Applicant, through counsel, contends that the proposed duplex does not trigger Site Plan Review.

The Applicant, through counsel, agreed and acknowledged that Article XIII, §300-75A of the Bylaw, containing Inclusionary Zoning provisions does apply to the proposed project.

In support of its position, the Applicant cited to the definition of Lot in the Bylaw as well as to Article XVIII, §300-111B(1)(b) and Article XIII, §300-75A of the Bylaw.

Lot is defined in the Bylaw as “an area or parcel of land or any part thereof, not including water area, in common ownership, designated on a plan filed with the administrator of this bylaw by its owner or owners as a parcel to be used, developed or built upon as a unit under single ownership or control. Any subsequent subdivision of a lot into two or more lots shall be subject to and conform to all the regulations of the district.”

Article XVIII, §300-111B(1)(b) of the Bylaw provides: “Any residential construction project consisting of more than three dwelling units on any single lot is considered a major project subject to site plan approval from the Planning Board.”

The Applicant’s position is that the proposal is not a major project subject to site plan approval because it is proposing to construct one duplex on one Lot, being Lot 9 and there is no specific segmentation provision in the definition of Lot or Article XVIII of the Bylaw.

The Building Commissioner informed the Board that in April of 2021 he learned through a communication between the then Assistant Planner and the Applicant, that the Applicant is intending to construct multi-family dwellings on thirteen of the Lots shown on the ANR. The Applicant provided similar information to the Town’s Assessor.

On April 20, 2021, the Applicant and its representatives met with the Building Commissioner and other Town Officials regarding the Applicant’s plans to develop the Property. Based on information provided by the Applicant, the Building Commissioner understood that the Applicant is intending to continue to own and control 159 Beach Road and to develop it for residential dwelling use with 26 units.

The Applicant, through counsel, confirmed at the hearing that it will own the land shown on the ANR Plan and does intend to develop at least some of the additional lots shown on the ANR Plan.

The Building Commissioner's position is that Site Plan Review is required and necessary because the Applicant is going to construct more than three dwelling units on 159 Beach Road and that the entirety of 159 Beach Road is considered a single Lot under the definition of Lot in the Bylaw because 159 Beach Road is a parcel of land in common ownership, designated on a plan, being the ANR Plan, filed with the Building Commissioner, by its owner as a parcel to be used, developed or built upon as a unit under single ownership or control.

In addition, in reaching his determination that the proposal is a major project requiring Site Plan Review, the Building Commissioner noted that there are no minimum lot size, set back or frontage requirements in the BC Zoning District nor are there any limitations on the number of units that may be constructed on a Lot and considered the intent of Site Plan Review as set forth in Article XVIII, Section 300-109 which provides: "this bylaw recognizes that certain developments of land, though generally suitable for location in a particular zoning district, are, because of their nature, size, complexity or other reasons of probable impact, capable of affecting the stated purposes of this bylaw, unless careful consideration is given to certain critical design elements. It is the intent of this bylaw to provide a mechanism for the review of an applicant's attention to such critical design elements within developments that are subject to review."

The Building Commissioner concluded that the Applicant filed a single building permit application for Lot 9 alone seeking to avoid having to obtain Site Plan Review.

The Planning Board and DPW each submitted comments to the Board relative to the Applicant's plans to develop 159 Beach Road identifying areas of concern that need to be considered through Site Plan Review including water, sewer, drainage, curb cuts, access, lighting, and public safety. Abutters and other members of the public also expressed similar concerns including at to traffic, access, parking, drainage and public safety.

The Town's Planning Director addressed the Board in support of the need for Site Plan Review for this project.

Members of the Board noted that the Applicant originally proposed one larger project to the Town and now it appears that the project is being presented so as to avoid Site Plan Review. The Applicant disputed that point contending that in no event is it subject to Site Plan Review.

The Building Commissioner reiterated to the Board that the Applicant is not now challenging his determination regarding the applicability of the Inclusionary Zoning provisions of the Bylaw.

Members of the public were provided with the opportunity to participate in the public hearing. The following abutters voiced their concerns with the proposed project:
Christine Schena – 10 Old County Wy, Ron April – 1 Michael's Wy, Chuck Shaw – 13 Old County Rd, Michael Colburn – 5 Caitlyn Cir, Richard Nagle – 4 Ferry Rd, David Holscher – 1 Old County Rd, Laurie Irwin – 191 Beach Rd, Ben Barsalou – 5 Old County Rd, Amy – Michael's Wy, Jack Hilton – 162 Beach Rd.

The following is a list of their concerns: safety of the neighborhood, safety of children in neighborhood, density of project, impact on resources including water, sewer, police and fire,

parking on narrow street, impact on traffic, rental units opposed to individually owned units, and the length of project.

MOTION: Mr. Dana makes a motion to uphold the October 13, 2021 decision of the Building Commissioner denying an application for a building permit based on the grounds given by the Building Commissioner for the Commissioner's interpretation and application of the Site Plan Review and Inclusionary Zoning Requirements of the Town's Zoning Bylaw for the Administrative Appeal for Case No. 21-30 at 159 Beach Rd. Mr. Fitzwater seconds the motion.

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

MOTION: Mr. Fitzwater makes a motion to authorize Chair DePetrillo to draft, sign and final the final decision after the public hearing. Mr. Schillizzi seconds the motion.

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

Minutes

November 9, 2021 Meeting Minutes

MOTION: Mr. Fitzwater makes a motion to approve the November 9, 2021 meeting minutes as written. Mr. Schillizzi seconds the motion.

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

Correspondence and Other Board Business

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.

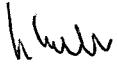
MOTION: Mr. Fitzwater makes a motion to adjourn the meeting. Mr. Schillizzi seconds the motion.

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

Respectfully submitted by Kate White, Board Secretary and accepted at the

December 14, 2021 meeting of the Zoning Board of Appeals.

Accepted as Presented:

A handwritten signature in black ink, appearing to read "Derek DePetrillo", written in a cursive style.

Chairperson, Derek DePetrillo

Cc: Town Clerk