



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

**MEETING MINUTES- PUBLIC HEARING**

**Hearing Date: February 25, 2020 @ 7:00 pm**

**Members Present:** Susan Pawlisheck (Chairperson), Derek DePetrillo (Secretary), Kevin Henderson, Drew Dana (Alternate), & John Schillizzi (Alternate)

**Member (s) Absent:**

Linda Tremblay and Paul Descoteaux

**Additional Persons Present:** Scott Vandewalle, Building Commissioner, Attorney Jesse Schomer, Attorney David Gallagher & Kate White ZBA Admin

Chairperson Pawlisheck called the meeting to order @ 7:00 pm.

**1. Continued Public Hearing**

**Case No. 19-28 Petition for Relief by Administrative Appeal** regarding an appeal of the permit denial letter issued by the Building Commissioner dated October 8, 2019.

**Address:** 109 Rabbit Road **Map 18, Lot 3**

**Applicant(s):** Outdoor Media Properties

**Attorney Jesse Schomer**, from the law office of Regnante Sterio, representing the petitioner, Outdoor Media Properties, approached the podium and requests that continued case 19-28 is heard out of order.

**MOTION:** Mr. DePetrillo makes a motion to allow the request for case 19-28 to be heard out of order. Mr. Schillizzi seconds the motion.

**VOTES:** Ms. Pawlisheck, Mr. Henderson and Mr. Dana vote in favor of the motion. All members express their vote individually and verbally. 4 in favor, 0 opposed. Motion passes unanimously (4-0).

## 2. New Public Hearing

**Case No. 20-04 Petition for Relief by Special Permit** seeking authorization for the issuance of building permits for proposed electronic outdoor advertising sign.

**Address:** 109 Rabbit Road                      **Map: 18, Lot: 3**  
**Applicant(s):** Outdoor Media Properties

Attorney Jesse Schomer summarizes the “Explanation of Relief Requested” to the Board for the electronic message board; the aforementioned referenced material was submitted with the application for Petition for Relief-Special Permit.

Chair: Do we have any comments from member of the audience?

Mark Nailor: Daniel Ct, Salisbury, MA. Where are they building this sign, 93 or 95?

Steven Martin: Congress St – Completely opposed

Donna Bartlett: Salisbury Plains, distributes handout to the Board members and applicant’s attorney. Explains her interpretation of the criteria required by Mass DOT for a sign, she shows where her field is located compared to where the sign is proposed to be constructed, touches on auto safety in regards to signs, insurance rates due to accidents on the highway, the signs negative effect on climate control, sign bylaws, and the impact on agriculture.

Mr. Dana: asks for clarification on the site plan radius that was submitted with application.

Mr. Schomer: the plan shows the 500’ radius around the sign for Mass DOT purposes.

Chair: what was the purpose of providing that plan in the packet?

Mr. Schomer: for illustrative purposes to show the location of the sign with the visible topography of the site.

Mr. Dana: what is the 500’ limited factor?

Mr. Schomer: that is a Mass DOT requirement; cannot be within 500’ feet of another electronic sign or an intersection. The state has issued the permits for the sign, as the state requirements have been met.

Chair: I have a question for Ms. Bartlett, where is your property located on the site map showing the 500’ radius?

Ms. Bartlett: shows chair where it is located on the plan.

Mr. Henderson: Do you have to reapply through the state?

Mr. Schomer: No, sir. We have all of the permits that we need from the state.

Chair: (speaking to audience member) Sir you disagree with that?

Eugene Willis: 7 Folly Mill Rd – states that he does not feel that the map is accurate.

Chair: explains that the case before the Board is for a special permit so that is the only material that needs to be presented to the Board.

Francis Jugengie: Congress St, Amesbury, MA, where is the evidence that the applicant has met the special permit criteria and have they provided that evidence?

Chair: In the application, “enables advertisement of essential services and public service announcements.”

Jack Sanborn: Congress St – explains that the sign would have negative agricultural effects, it would be a nuisance to neighbors, and would negatively affect property values.

Robert Campbell: Outdoor Media, explains, to the Board, the positive impact and community benefit the current signs have since 2014. (amber alerts, emergency community alerts, safety alerts from the Police Dept., Town Meetings, food drives, community garden, boys and girls club advertises various activities, parks and rec department advertises all of their events, PTA fundraising events, Salisbury Betterment Association, Salisbury Beach Partnership fundraisers, and the Pettengill House fundraisers are some of the advertisement that are advertised for free)

Steven Martin: We have plenty of media without this; we have not had any problems yet without this proposed instrument.

Mr. Gallagher, from the law office of Regnante Sterio, also representing the petitioner, Outdoor Media Properties: responds to the comments made, contrary to belief, there would not be any bright flashing lights. He further explains that the light impact is heavily regulated by the state and that the lights would dim at night.

Mr. DePetrillo: We received correspondences from real estate agents stating that the sign would negatively affect property values. How can you say with 100% certainty that this sign will not be affect property values?

Mr. Gallagher: That issue has already been resolved by this Board for this particular sign.

Mr. DePetrillo: That was when we did not have anyone in front of us raising these issues, but now circumstances have changed and we have been presented with their concerns.

Mr. Gallagher: I understand the point that you are making, however, from our point of view that decision has been made. I do not think that Board can be in a position to decide in March 2018 that it does not affect property values and then to make a decision on the exact same billboard at the exact same location at a later date that it does affect the value of properties in the area.

Chair: you brought a new request for a Special Permit to us and as a result of that we will do our due diligence and look at the facts in front of us and make a decision based on your presentation today. And as Derek has pointed out, we have consistently listened very well and very hard to abutters and the impact that anything that happens in Salisbury will have on the people that live here. For you to not believe that we are not going to take that into consideration is naïve.

Mr. Gallagher: The other point I would make is Massachusetts Law is very clear that under Zoning 40A, the Board is to not take into account, property values.

Chair: the Board is to take into account whether or not the requested use is essential or desirable to public convenience or welfare and I would argue based on a room filled with people who do not want this sign that they believe it to be undesirable.

Mr. Gallagher: I understand that they believe that it is undesirable, however, it is my understanding and there have been studies that indicate that billboards like these do not negatively affect property values.

Chair: I understand your position very clearly. Do we have other questions?

Mr. DePetrillo: based on that too, we also know that the Town of Peabody, at one point in time had approved them in 2012 and then decided they were not something of value to the town. So Towns can make decisions that go against what they previously thought were at the time something valuable to the Town and then realized that it wasn't.

Mr. Gallagher: I agree with that, but this circumstance is a little different because here we have a sign that was approved and we are now seeking an additional special permit, at the suggestion of Town Council, for the exact same sign, at the exact same location where this Board had unanimously determined that it did not negatively affect property values. I do not disagree that a Town can allow billboards for a period of time and then if it acts appropriately make a decision that they are not going to allow these billboards because we do not think they are beneficial to

the Town. I think that is what you are talking about in regards to Peabody. No question that a Town can do that.

Chair: questions?

Mr. Henderson: what effect on property values does the highway have?

Chair: the people that own those properties would have to answer that.

Mr. Dana: my house is in the 500' range.

Mr. Henderson: what was that?

Mr. Dana: my house is in the 500' range. I will have to look at this sign every single day, actually from my bedroom window.

Chair: really?

Mr. Dana: yes, I live on the corner of Main St and 95 South.

Chair: did you know that before you sat here?

Mr. Dana: I have owned it for 5 years.

Chair: Drew you will not be voting on this case, you need to recuse yourself.

Mr. Dana: okay.

Mr. DePetrillo: now we have a 4-member Board.

Chair: All right, we have a 4-member Board, my apologies for not informing you of that before, but we only have four members that can vote. Therefore, I have to give you the opportunity to decide whether you would like to proceed with the 4-member Board that you have or wait for additional members that can also hear this.

Mr. Gallagher: We will move forward.

Chair: You have made a decision to move forward with a 4-member Board. The decision needs to be unanimous. Do we have a motion?

**MOTION:** Mr. DePetrillo makes a motion to deny the Special Permit for 109 Rabbit Rd based on the proposed use will create undue traffic congestion issues and will impair the integrity or character of the district and area and would detrimental to the health and welfare of the neighborhood. Mr. Schillizzi seconds the motion.

**VOTES:** Ms. Pawlisheck votes in favor of the motion. Mr. Henderson votes against the motion. All members express their vote individually and verbally. 3 in favor, 1 opposed. Motion fails.

Mr. Schomer: Procedurally, Madam Chair, the Board's vote is a denial of the Special Permit.

Mr. Henderson: What was that again?

Chair: That the Board votes again and we record the vote as a denial of the Special Permit.

**MOTION:** Mr. DePetrillo makes a motion to deny the Special Permit for 109 Rabbit Rd based on the proposed use will create undue traffic congestion issues and will impair the integrity or character of the district and area and would detrimental to the health and welfare of the neighborhood. Mr. Schillizzi seconds the motion.

**VOTES:** Ms. Pawlisheck votes in favor of the motion. Mr. Henderson votes against the motion. All members express their vote individually and verbally. 3 in favor, 1 opposed. (3-1) Motion fails, therefor the request for the special permit is denied.

Chair: Do you want to move forward with the Petition for Relief by Administrative Appeal?

Mr. Schomer: We do, Madam Chair.

**Case No. 19-28 Petition for Relief by Administrative Appeal** regarding an appeal of the permit denial letter issued by the Building Commissioner dated October 8, 2019.

**Address:** 109 Rabbit Road **Map 18, Lot 3**

**Applicant(s):** Outdoor Media Properties

Chairs explains to the applicant that there is four-member board so the vote needs to be unanimous to pass.

Mr. Schomer: Thank you Madam Chair, we do not have much to add from our previous presentation. Our position, with respect to this matter, is that the special permit under the sign bylaw constitutes all of the relief that is needed from this Board. Our contention, we respectfully disagreed with Town Council's letter that a special permit that the Board just denied was necessary. We believe that what the Board has already granted to the applicants suffices for the issuance of building permits and on that basis the Building Commissioner, in error and abuse of

his discretion by refusing to issue the building permit for the sign that this board has unanimously granted subject to the findings that I mentioned in my previous presentation regarding property values and lack of impacts to the neighborhood. So we respectfully request that the board take action administratively to reverse the decision of the Building Commissioner in refusing to grant building permits for this project.

Chair: Thank you, do we need to hear anything else on this one this was only brought back to us because they wanted to have an opportunity to craft the case that we just heard. Do we have any questions?

Mr. Gallagher: As the Board is aware, the Building Inspector denied the building permit request based upon the revision that was made to the sign bylaw back in May of 2019, to revise the sign bylaw to provide that electric outdoor advertising was from that point forward to be regulated by the zoning bylaw. So that is clearly the basis of the denial. I do not think it can be disputed that the result of amending the sign bylaw to provide the electronic outdoor advertising had to be regulated by the zoning bylaw resulted in an amendment to the zoning bylaw. Because what in fact was said that from now on instead of regulating these type of signs under the sign bylaw, we are regulating that use under the zoning bylaw so in effect, an amendment as a zoning bylaw. Case Law in Massachusetts is clear that you cannot amend zoning bylaws, without going through the proper procedure under Chapter 48§5; which requires a hearing before the Planning Board and two-thirds at Town Meeting; that was not done in regards to this amendment. There is particular case law, one of which one of these cases was actually cited by Town Council in a letter to the board. The Valley Green Grove case in which Massachusetts Land Court provided that the zoning bylaw must be reviewed by the Planning Board at a public hearing and then reported on by the Board and crucially may only then be enacted by a two-thirds vote at Town Meeting. Generally, general bylaws have no such requirements; they may be enacted by a majority vote. If a municipality were to use a general bylaw to change or override a zoning bylaw, it would avoid these limits on its power to enact zoning bylaws in the scope of the bylaws. The Reiko Incorporated case, which is a Supreme Judicial Court case the highest court in the Commonwealth of Massachusetts, provided that under Chapter 40A§6 a zoning bylaw may be changed by amendment edition, or repeal, but only in the manner here and after provided. That is by following the technical procedures, outlined herein. If the statutory requirements are not met, existing zoning regulations remain unaffected by the purported amendment. So, under that case law, it is absolutely clear that you cannot amend a zoning bylaw by amending a general bylaw. If you attempt to do that, the change to the zoning bylaw is ineffective. That is what was done here. The general bylaw, the sign bylaw, was amended to provide it from now on electronic outdoor advertising as defined would be regulated by the zoning bylaw. That is an amendment to the zoning bylaw, it was not enacted under the statutory procedure; it is ineffective. If that is true, and it's not surprising that the Building Inspector would not necessarily know the niceties of the law, but if that is true, which we believe it is, then

the basis of the denial by the building inspector is invalid and my clients are entitled to the building permits.

Mr. Henderson: That zoning amendment was at a Town Meeting.

Mr. Gallagher: I do not believe that it was presented to the Planning Board first though.

Chair: It was presented at Town Meeting.

Mr. Henderson: It was voted upon at Spring Town Meeting in 2019, I know, I am on the Warrant Advisory.

Chair: Are there any other questions? Do we have a motion on the Administrative Appeal?

**MOTION:** Mr. DePetrillo makes a motion to uphold the Building Commissioner's permit denial letter and deny the Administrative Appeal for 109 Rabbit Rd. Mr. Schillizzi seconds the motion.

**VOTES:** Ms. Pawlisheck votes in favor of the motion. Mr. Henderson votes against the motion. All members express their vote individually and verbally. 3 in favor, 1 opposed. Motion fails, therefor the request for the administrative appeal is denied.

**Case No. 20-02 Petition for Relief –Special Permit** regarding the erection of an electronic digital sign for the purpose of advertisement  
(digital portion of the sign will be 3.11 ft x 10 ft).

**Address:** 6 Old Elm Street **Map 10, Lot 226**

**Applicant(s):** David Battcock on behalf of George Penniman

Bob Messier with Daktronics representing David Battcock, the owner of Newburyport Signs approaches the podium.

Mr. Messier: The owner of the property is proposing a static sign with a message center allowing him to advertise for the business because the building is set so far back from the road some people do not even know it is out there.

Mr. DePetrillo: Is the sign going to be revolving, does it stay still, is it flashing? .

Mr. Messier: It is typically a static message that changes every so many seconds. Is there anything in your ordinance that dictates that?

Mr. Schillizzi: It's supposed to be stagnant, right?



Chair: It's supposed to be stagnant.

Mr. Messier: It is not animated or flashing. What are the delay requirements or how many seconds between messages?

Chair: Scott, do you know how long the message needs to stay before it can change?

Building Commissioner: As I am sure you know, the ordinance that we have really does not address this very specifically. Building Commissioner refers to the bylaws: "Electronic message boards are electronically controlled signs in which can change messages without the physical movement of the letters." So it is really up to the Board to define it to what you think is appropriate

Mr. Henderson: What we do not want is animations or flashing lights.

Mr. Messier: Typically, we do not do any movement or animations. It is just a matter of how often messages can change.

Chair: We already have a lot of signs on that road that do more movement than I am comfortable with personally. There is one place in particular that the sign is distracting while you are driving. We just want to make sure that this sign will not be distracting.

Mr. Messier: We do not do any flashing, animation or movement. But it can go instantaneously from one message to the next. DOT and a lot of Towns typically changes messages about every 10 seconds. Federal DOT on the highway change messages every 3 seconds, but that is more for public safety purposes. 10 seconds is very typical.

Mr. DePetrillo: What would the sign say exactly?

Mr. Messier: The owner of Playball is going to advertise events.

Mr. DePetrillo: Is it going to be on all day and night?

Mr. Battcock: All day and into the night.

Chair: What are the hours of operation?

Mr. Messier: The business owner is not here, we are representing the business owner.

Mr. Battcock: I believe they run up to about 10:00pm so they close before other places with the flashing signs and this one will be set back from the road about 25'.

Chair: Do we have any more questions?

Mr. Messier: If I could just finish with a comment, I work for a manufacturer of these products, we design and manufacture them. We use a photocell that automatically reads the ambient light outside which will automatically dim that sign to the proper level. Not all signs have this feature; this sign will never be over bright it's actually less bright than a typical incandescent bulb.

Chair: Do we have any questions?

Mr. Henderson: Scott, does the top portion of the sign meet size requirements?

Building Commissioner: I believe that portion of the sign was approved for Special Permit through this Board a couple of months ago.

Chairs explains to the applicant that there is four-member board so the vote needs to be unanimous to pass.

Mr. Battcock agrees to continue with the vote.

Mr. DePetrillo explains to the applicant that he may want to postpone the vote to give the business owner the opportunity to present the business hours of operation to the Board.

Mr. Battcock: the owner was looking for the sign to operate 8:00am to 10:00pm daily.

Mr. DePetrillo: what messages will be displayed?

Mr. Messier: Hours of operation, birthday parties, and such events.

**MOTION:** Mr. DePtrillo makes a motion to approve the Special Permit for 6 Old Elm Street with the condition that the message board is only operating from 8:00am to 10:00pm daily. Mr. Henderson seconds the motion.

**VOTES:** Ms. Pawlisheck and Mr. Schillizzi vote in favor of the motion. All members express their vote individually and verbally. 4 in favor, 0 opposed. Motion carries unanimously (4-0).

**Case No. 20-03 Petition for Relief – Variance** regarding the relief from dimensional setbacks for a shed constructed within the side and rear yard setbacks.

**Address:** 12 Lynne Ave      **Map: 5, Lot: 51**  
**Applicant(s):** Steven & Darlene Frye

Chair explains to the applicant that there is four-member board so the vote needs to be unanimous to pass.

Steven Frye – applicant, agrees to proceed with the four-member board and explains to the Board that his lot is too small to build a garage so he hired a builder to build a shed instead.

Chair: So he did not pull a permit.

Mr. Frye: No, at the time we thought it would be under the size that required a permit, it ended up being 210 square feet.

Chair: How did you find out that your shed required a permit and was within the setbacks?

Mr. Frye: I received a cease and desist letter from the Building Inspector.

Chair: How far along did you get before you received the cease and desist order?

Mr. Frye: 95 percent complete.

Chair: Can it be moved?

Mr. Frye: it would probably be quite a challenge; the skirting would have to be removed, I am sure anything could be done, but it would be a hardship.

Mr. Henderson; What is it sitting on?

Mr. Frye: solid blocks.

Mr. Henderson: What are the setbacks, 10' and 10'?

Chair: Yes, and it is located within 5' and 5'.

Mr. DePetrillo: Scott, on the letter it states apply for and receive all required building, electrical, gas, mechanical permits to remedy. Have he done that already?

Building Commissioner: This property caught my attention not because of a shed, but because what appeared to be a small addition being constructed. The shed is just one aspect of the things that will need to be remedied if this is approved and we have been working through them.

Mr. DePetrillo: So he has addressed the other items on the letter.

Building Commissioner: He has and that is standard language at the bottom of the letter because at the time that I send the letter, I may not know exactly all the permits that are involved because I may not have observed the interior at that time.

Chair: Does the Board have any questions? Do I have a motion?

**MOTION:** Mr. DePetrillo makes a motion to approve the Variance based on the shape of the lot. Mr. Henderson seconds the motion.

**VOTES:** Ms. Pawlisheck and Mr. Schillizzi vote in favor of the motion. All members express their vote individually and verbally. 4 in favor, 0 opposed. Motion carries unanimously (4-0).

### **3. Minutes**

October 22, 2019 Meeting Minutes

Mr. DePetrillo: Members present: Susan, Linda, Kevin, Drew, John and myself.

**MOTION:** Mr. Henderson makes a motion to approve the minutes as presented. Mr. DePetrillo seconds the motion.

**VOTES:** Ms. Pawlisheck and Mr. Schillizzi vote in favor of the motion. All members express their vote individually and verbally. 4 in favor, 0 opposed. Motion carries unanimously (4-0).

December 10, 2019 Meeting Minutes

Mr. DePetrillo: Members present: Susan, Linda, Kevin, Paul and myself.

**MOTION:** Mr. Henderson makes a motion to approve the minutes as presented. Mr. DePetrillo seconds the motion.

**VOTES:** Ms. Pawlisheck votes in favor of the motion. All members express their vote individually and verbally. 3 in favor, 0 opposed. Motion carries unanimously (3-0).

January 14, 2020 Meeting Minutes

Mr. DePetrillo: Members present: Susan, Linda, Kevin, Paul, Drew and John.

**MOTION:** Mr. Henderson makes a motion to accept the minutes as presented. Mr. Schillizzi seconds the motion.

**VOTES:** Ms. Pawlisheck votes in favor of the motion. All members express their vote individually and verbally. 3 in favor, 0 opposed. Motion carries unanimously (3-0).

### **4. Correspondence and Other Board Business**

None at this time

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

None at this time

6. **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. DePetrillo makes a motion to adjourn the meeting. Mr. Henderson seconds the motion.

**VOTES:** Ms. Pawlisheck and Mr. DePetrillo vote in favor of the motion. All members express their vote individually and verbally. 4 in favor, 0 opposed. Motion carries unanimously (4-0).

**Next Scheduled Public Hearing: March 10, 2020**

Respectfully submitted by Kate White, Board Secretary and accepted at the March 10, 2020 meeting of the Zoning Board of Appeals.

Accepted as Presented;

A handwritten signature in cursive script that reads "Susan M. Pawlisheck".

Chairperson Susan Pawlisheck

Cc: Town Clerk