



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

MEETING MINUTES- PUBLIC HEARING

Hearing Date: January 14, 2020 @ 7:00 pm

Members Present: Susan Pawlisheck (Chairperson), Kevin Henderson, Linda Tremblay, Paul Descoteaux, Drew Dana (Alternate), John Schillizzi (Alternate)

Member (s) Absent: Derek DePetrillo (Secretary)

Additional Persons Present: Scott Vandewalle, Building Inspector/Zoning Officer, Attorney Jesse Schomer, Attorney David Gallagher & Kate White Zoning Board Admin

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

1. Continued Public Hearings

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

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

Applicant(s): Outdoor Media Properties

Remand from the Appeals Court in the case of Clear Channel et al. vs. Susan Pawlisheck, et al. (Zoning Board of Appeals), Appeals Court No. 2017-P-1609 (An appeal pursuant to General Bylaw Chapter 214-12)

Chair states this is a continued hearing because the Board wanted to reach out to Town Council, KP Law, for an opinion, which was provided to the petitioner. Ms. Pawlisheck asks if there is any comment in regards to the Town Council's opinion.

Attorney Jesse Schomer - from the law office of Regnante Sterio representing the petitioner approached the podium and states that he did have the opportunity to review the Town Council's opinion and spoke with Attorney Amy Kwesell earlier this day in regards to the last paragraph of her letter which offers an alternative method for the Board to proceed in this matter. Attorney Schomer explains that he disagrees with Attorney Kwesell's opinion on a couple of points.

- Page one, third paragraph. Grandfathering is not applicable in this situation. The petitioner's argument is that they feel that the special permit that the Board granted should be protected by M.G.L C40A, §6.
- Page two, first paragraph. Differences between General Bylaws and Zoning Bylaws, municipalities cannot use general bylaws to amend zoning bylaws. Attorney Schomer believes that is what happened in this case. The effect to the change to the sign bylaw was to create a new use under the zoning bylaw, now this use that previously governed by this bylaw is now governed by this bylaw. The change in the sign bylaw had this effect on the zoning bylaw, that is important because enacting zoning changes or enacting zoning bylaws for the first time carries specific requirements, such as notice requirements, Town meeting, advertising after the fact and here that didn't happen. Because that didn't happen the effect of this case law would be to say that the bylaw change that was enacted on the sign bylaw 2018 was invalid, null and void.
- Page one, paragraph four. Municipalities cannot regulate matters of zoning through non-zoning bylaws. What it means is if the town is regulating a matter of zoning, signs, in this case by means of a general bylaw, the Town isn't allowed to do that under these cases that Town Council is citing. If Attorney Kwesell is right about that then that would have a pretty broad effect. The effect would be that the entire sign bylaw is invalid and every single permit that was issued under it is also invalid, null and void.
- Let's say that Town Council was right about everything in her letter. The sign bylaw was a general bylaw, let's say that the sign bylaw and the change in our permit were not protected by §6. The effect of that is somewhat surprising because if the special permit that was granted by this Board unanimously, if that is not protected by §6 it's also not subject to the requirement that we started work within a certain amount of time and what that would mean is that the special permit that this Board unanimously granted is in effect. There is no change to the zoning or the sign bylaw could effect it. It's a permit that is applicable to the property and on that basis the Building Inspector could have granted a permit and still could grant a permit tomorrow because it is a valid permit. There is no requirement to start work at any time, it's no different if they had put up a sign pursuant to that permit or they hadn't put up assign so the treatment here by the Building Inspector would be effectively for him to say because we changed the sign bylaw, I would be authorized to go out and say to someone who put up an electronic billboard under the sign bylaw, you need to tear that down because we changed the general bylaw. That's not how it works, the sign permit allowed the construction of it and allowed the issuance of building permits and it's the same here whether or not the construction has commenced. That's another basis for the Board to reverse the Building Inspectors decision.
- Page two, last paragraph. "A special permit pursuant to the Zoning Bylaw, Section 300-9, should be obtained prior to a building permit issuing." Attorney Schomer asked Attorney Kwesell what she had meant by that statement. Her response was if we were to apply to this Board for a special permit under the zoning bylaw, the Board would be authorized to grant that special permit which would give us effectively the same relief that we are

asking for tonight. Leave to get a building permit from the Building Inspector to proceed with the construction of the sign that the Board has already authorized. This would require a little more footwork from our part because it would be a new public hearing, we'd have to re-notice it, re-advertise for that. So we couldn't do that tonight, however, if the Board is inclined to side with the applicant in this case we would contend on the sight of fairness because the applicant was granted the special permit unanimously by this Board previously on two occasions to build this billboard and has proceeded diligently to get this sign constructed and to change positions midway through the process after all this time and expense has been occurred we would contend is fundamentally unfair to the applicant in this case. So this off ramp, offers a way to proceed to that course of fairness. The Board can grant the special permit and say we are allowing this use even though the zoning has changed and that is Town Councils recommendation to the Board.

Chair - Does anyone have any questions?

Chair - states that Derek DePetrillo is not present. John Schillizzi has followed the Mullens Law and has reviewed the case. The voting members that will be voting on this case tonight are:

John, Linda, Kevin, Susan, and Paul.

Chair – John do you have any questions?

Mr. Schillizzi – No.

Chair – Linda, do you have any questions?

Ms. Tremblay – No.

Chair – Kevin, do you have any questions?

Mr. Henderson – want to look over the time line.

Chair- Ok. Anything Paul?

Mr. Descoteaux – A special permit was Granted?

Chair – yes

Mr. Descoteaux – did we confirm that there are no time tables tied to that because that seems to be the biggest contention last time?

Chair – in the opinion provided by Town Council, you will see that she actually references the timing.

Attorney Schomer – Mr. Descoteaux I can address that if you would like.

Mr. Descoteaux – please do.

Attorney Schomer – the issues we were discussing at the last hearing regarding the timing and when work started, when this survey happened and when this conservation occurred. That was really contingent on the assumption that we were making from the start which is that this is effectively a zoning bylaw that this special permit was granted on and on that basis was protected by §6. The Town Council's opinion is that because this is a general bylaw it's not governed MGL Chapter 40, §6 and if she is right about that, then that means that the timeline doesn't matter, it goes out the window. There's no timeline whatsoever there's just a valid permit that's still out there and if that's the case then the Building Inspector should've just granted the building permit.

Mr. Descoteaux – ok, thank you.

Chair – remember your hearing one side and Town Council isn't here to clarify what we have in front of us and as you know lawyers right in legal ease so it is hard for us to understand all of it, but we are trying our best. Other questions? Kevin, you have been through that and you want to ask a question?

Mr. Henderson – Filed the NOI with Concom in February 2019, that was 3 months before Town Meeting. Seems to me that they started the process and before the change in the zoning bylaw.

Chair – That's a good point

Mr. Henderson – when you pull a building permit, you are given a list of all the departments in town that need to sign off on the permit, so they would have had to had conservation sign off and conservation would say that it would have to go in front of the board because of close it is to wetlands and that is what they did.

Chair – ok, on the other hand they did not apply for a building permit either

Mr. Henderson – right because they were stuck in conservation until August of 2019.

Attorney Schomer – in addition to that, at that time we were also involve in the state permitting process with the Office of Outside Advertising. We had to complete that before pulling building permits. I believe there was a question last time whether there is a legal requirement not to apply for a building permit until we had all of those, there is none that he is aware of, but as practical consideration an applicant wouldn't do that because it is an involved process, a complicated process of putting together construction drawings, surveying. It's expensive and its time consuming, practically speaking you wouldn't go for a building permit because it is the last permit needed.

Chair – we need to remember what we are looking at this evening, the only thing that we are looking at is the appeal to reverse the Building Inspectors decision. So what we are talking about is do we uphold the Building Inspectors decision to deny the permit or do we reverse that decision. There are a lot of other pieces to the puzzle but that is the only thing before us. There's a suggestion by Attorney Kwesell, that there is an off ramp, but that is not what is on the table. The only matter on the table for us is do we uphold the Building Inspectors decision to deny the permit or do we reverse the Building Inspector's decision.

Mr. Henderson – are you saying the that off ramp is an alternative option?

Chair – Yes, so is there any more discussion on this topic? This was continued from last meeting because the Board wanted an opinion from Town Council, we have that now. I think it is now time to make a decision about how we would like to move forward. Do any of you have any questions?

Ms. Tremblay – can we summarize the third paragraph on page two. To me that sounds like the proceeding letter arguments.

Chair – would you mind reading it because not everyone here has a copy.

Ms. Tremblay – “However, in my further opinion, the circumstances here are unique as signs have always been regulated by the General Bylaw and until recently, did not refer to the Zoning Bylaw. Moreover, with regard to grandfathering, Outdoor Media has a special permit under the

General Bylaw which a) does not provide for grandfathering; and b) does not comport to a special permit pursuant to the Zoning Bylaw, Section 300-9.

So in short she is saying...

Chair – does not comport means does not translate into.

Ms. Tremblay – so in short she is saying that this was done under General Bylaws and there is no grandfathering under General Bylaws for electronic signs, right? And it doesn't translate into special permit pursuant to the Zoning Bylaws, it would be its own special distinct which is described in the next paragraph.

Chair – yes, that is why she has the last paragraph.

Chair – Page one, paragraph one Attorney Kwesell agrees that the Building Inspector correctly denied the building permit as the use "Electronic Outdoor Advertising" is not included in the use chart.

Attorney Schomer – Madam chair may I comment on that? Very briefly on the point that you made Ms. Tremblay, what I take Town Council's point here is to be that she is referring back to page two, top paragraph, where she talks about some of the case law that I discussed on the issue between the General and Zoning Bylaws. Her claim is that it doesn't matter because it's always been regulating under a Sign Bylaw basically because it's been done this way along time it doesn't matter respectfully we don't agree with that assessment but these are legal claims, and I think Town Council would acknowledge this, having been adjudicated in court I don't think there's any one answer or another. Which is why I wanted to focus on the other issues, where I think it is a lot clearer and there is a way for the Board forward and specifically on the point that she makes in the paragraph where the Sign Bylaw is under the General Bylaw and as you mentioned is not protected by grandfathering under §6. Our response to that as I mentioned a few minutes ago is that sword cuts both ways because there is no grandfathering protection, but there is also no requirement to start work so it doesn't need to be grandfathered. It's a valid permit, it's still out there, it's still effective, it wasn't effected by the bylaw change whatsoever. On that basis the Building Inspector should've granted the building permit because it's just a valid permit irrespective of what Town Meeting did, it's a permit that's valid and it's as valid as if somebody had built a sign.

Chair – Thank you.

Attorney Schomer – Thank you

Chair - does anyone have any questions or do we have a motion?

Madam Chair makes a motion to uphold the decision of the Building Inspector to deny the special permit. Ms. Tremblay seconds the motion.

VOTES: Mr. Schillizzi, Ms. Tremblay and Ms. Pawlisheck vote in favor of the motion. Mr. Henderson and Mr. Descoteaux vote against the motion. All members express their vote individually and verbally. 3 in favor, 2 opposed. Vote resulted in a (3-2) deadlock.

Chair – Do we have another motion?

Attorney Schomer – Madam Chair may I offer a suggestion? If the Board is deadlocked at this point, perhaps it makes sense to continue to the next hearing to give us an opportunity to file the alternative request for relief by the permit suggested by Town Council so that all options are before the Board in one instance because as I said the end result whether it's by overturning the decision of the Building Inspector which I understand the Board is hesitant to do that because he is a smart guy, he gets paid to this job and he does it very well. So I understand the Boards' concern with doing that. End results that the Board can grant relief, the fairness relief of allowing us to proceed with the construction is achieved in the same fashion as the special permit. So if both options are before the Board at one instance perhaps that could be a way to relieve the deadlock.

Chair – if you are asking for a continuance because you have something else that you would like to discuss, you would like to reach out to Town Council, you would like to do any of those things I am happy to grant you a continuance, but you just saw a vote.

Attorney Schomer – yup.

Chair – ok. It's your decision if you would like to have a continuance.

Attorney Schomer – I think we would, I think we would madam chair.

Chair – Absolutely.

Attorney Schomer – I think once both options are in before the Board, I think the picture will become a little bit clearer and it doesn't become a binary choice between siding with us over siding with the Building Inspector, which is a bad position I understand for the Board to be in. Respectfully we would request that continuance so we can, we're not seeking an additional opinion from Town Council, but it would be to file a count to relief to be heard at the Board's next meeting.

Chair – fair enough. Can I have a motion

Mr. Descoteaux - makes a motion to grant the continuation to the February 11th meeting. Mr. Henderson seconds the motion.

VOTES: Mr. Schillizzi, Ms. Tremblay, and Ms. Pawlisheck vote in favor of the motion. All members express their vote individually and verbally. 5 in favor, 0 opposed. Motion carries unanimously (5-0).

2. New Public Hearings

Case No. 20-01 Petition for Relief – Finding (by Special Permit) regarding the extension/alteration of a pre-existing, non-conforming structure.

Address: 288 North End Blvd. **Map 34, Lot 108**

Applicant(s): Donna M. and Robert Palmisano

Mr. Robert Palmisano approaches the podium and explains that they would like to alter the first floor of the building to increase the home from a 3 bedroom to a 5 bedroom according to the drawings. The bedrooms would be atop of the current bump out on the west side of the building.

Chair – going up?

Mr. Palmisano – just going up.

Chair – same footprint?

Mr. Palmisano – same footprint, just going up

Chair – what will the overall height be when you are done?

Mr. Palmisano – it will be below the current roofline.

Mr. Henderson – you're not touching the roofline?

Mr. Palmisano – no

Ms. Tremblay – this pre-existing nonconformity is the side setback?

Mr. Palmisano – just the north set back

Chair – so there is no change from side setback, front setback, back setback, land coverage, nothing is changing.

Mr. Palmisano – correct, the only reason I had to go for a finding is because I am expanding on a non-conforming use.

Chair – Does anyone have any questions?

Chair - states who will be voting tonight; that being: Linda, Kevin, Susan, Paul and Drew.

Chair – questions?

Mr. Schillizzi - city sewer?

Mr. Palmisano – yes, city sewer and water.

Chair – do we have a motion?

Mr. Henderson makes a motion to approve the Special Permit for 288 No End Blvd without conditions. Mr. Dana seconds the motion.

VOTES: Ms. Pawlisheck, Ms. Tremblay and Mr. Descoteaux vote in favor of the motion. All members express their vote individually and verbally. 5 in favor, 0 opposed. Motion carries unanimously (5-0).

3. Minutes

October 8, 2019 minutes to be approved.

Mr. Descoteaux makes a motion to accept the minutes as presented. Mr. Henderson seconds the motion.

VOTES: Ms. Pawlisheck, Ms. Tremblay and Mr. Dana vote in favor of the motion. All members express their vote individually and verbally. 5 in favor, 0 opposed. Motion carries unanimously (5-0).

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.

Mr. Dana makes a motion to adjourn the meeting. Ms. Tremblay seconds the motion.

VOTES: Mr. Henderson, Ms. Pawlisheck and Mr. Descoteaux vote in favor of the motion. All members express their vote individually and verbally. 5 in favor, 0 opposed. Motion carries unanimously (5-0).

Next Scheduled Public Hearing: February 11, 2020

Respectfully submitted by Kate White, Board Secretary and accepted at the February 25, 2020 meeting of the Zoning Board of Appeals.

Accepted as Presented;



Chairperson Susan Pawlisheck

Cc: Town Clerk