

Salisbury Planning Board Meeting Minutes

Date: Tuesday, April 17, 2018

Place: Colchester Auditorium, Salisbury Town Hall, 5 Beach Road

Time: 6:00 p.m.

PB Members Present: Vice Chair Gina Park (GP), Don Egan (DE), John “Marty” Doggett (JMD), Louis Masiello (LM) and Gil Medeiros (GM).

PB Members Absent: Chair Helen “Trudi” Holder (TH)

Also Present: Assistant Planner Bart McDonough (BMD), Planning Board secretary Sue Johnson (SJ)

Vice Chair Gina Park brought the meeting to order at **6:00 p.m.** in the Colchester Auditorium, Salisbury Town Hall. Announced, per opening meeting law, that the meeting was being recorded.

1. New Business

- a. **Signing of Plans & Permits** - Nothing to be signed

2. Public Hearing 6:00 pm

- a. **Cont. Public Hearing:** A major site plan filing by Kevin McDonald aka Coast Lane LLC for property located on 158 Beach Road Salisbury, MA. Proposed of work is to demolish 3 existing structures and construct one building with 4 residential units.

Eric Botterman (EB) stated that the Board has been presented with revised architectural drawings which show the following changes:

- *Overhang added to Beach Road side of the property
- *The doors on the front of the house now match the back
- *Revised lighting plan
- *Landscaping was added to the Beach Road side
- *Stockade fence was added on the Eastern side

EB stated that comments were received today from Joe Serwatka and one of the issues that he had an issue with the 16' long driveway for Unit # 1. EB stated that he checked with the Building Inspector to see if this was part of the variance application and Scott did not think it was but was going to check.

EB stated that they did not agree with the storm water comment from Joe Serwatka and stated that a 4 unit building is exempt from DEP storm water regulations but will move it to the minimum offset of 20'.

DE asked why the decks were removed on the Beach Rd side of the project. EB replied that they were removed due to the Boards comment from the last meeting that it made it

look like the back of the building and believes that by removing them it makes the building look better.

DE asked if sidewalks would be added on Beach Rd. **EB** stated that it was a State highway and Mass DOT would allow a sidewalk which would need to be maintained by the Town.

GP asked about the possibility of vehicles damaging the Dogwood trees on the Washington St side of the property. Lisa Pearson (**LP**) stated that a condition could be to bond them so that if something does happen they could be replanted or moved.

LP stated that there could be a condition for the applicant and Planning Department to meet with Joe Serwatka and make sure that the storm water calculations are met.

GP asked **LP** if she had any other concerns with the list. **LP** stated that the Board may want to put a condition that future porches could be allowed.

DE asked to condition that stockade fencing not be allowed on Beach Road in the future. **LP** stated that the Board could condition what type of fence would be allowed. **DE** would like to condition that if any type of fencing were to be put onto Beach Road side of the property in the future that the applicant would need to present plans to the Board.

GP stated that the following were conditions:

- *Bonding for trees
- *Storm water satisfaction
- *Future porches
- *Future fencing on Beach Rd

GP asked for a motion to close the public hearing.

GM moved to close the public hearing

DE seconded

Vote: 5-0, motion passed

GP asked for a motion to approve the site plan with the conditions discussed.

LM Motioned to approve

JMD seconded

Vote: 4-1, motion passed

DE opposed

- b. Cont. Public Hearing:** A major site plan and special permit filing by Big Block Development Group for properties located on 8, 16 & 18 Broadway and 6-28 Ocean Front South Salisbury, MA. Proposed work is to construct a mixed-use redevelopment comprising 240 residential units, 6,500 square feet of commercial space and a large parking lot.

Wayne Capolupo (**WC**) invited Attorney Paul Crochiere (**PC**) to come up and speak about the easement letter that the Board received from the law office of Regnante, Sterio & Osbourne. **PC** stated that the appurtenant easement was granted in 2007 to the Dodgem Corporation for 2 lots (Map 32/Lot 365 & Map 32/Lot 374) and went on to state that the units on other lots in this project

would not have use of this easement. **PC** explained how to manage this and stated that in the condominium master deed for the Big Block property to have exclusive use (common area) just for the units that are situated on the 2 lots for which the easement was granted. **DE** stated that if approval is granted the applicant is going to submit an ANR to combine the lots into one lot and asked what would happen to the easement after this happened. **PC** replied that the easement would still be in effect for the land that it was granted and would need to be represented on the engineering drawing. **PC** stated that his clients are willing to work with Ocean Echo and their attorney to work out the logistics. **LM** asked how the applicant would control access to the easement to only the units that fall on the 2 lots. **WC** stated that they would have an automated gate system. **GP** asked how many units fall on the 2 lots. **WC** replied approximately one half (120+/-) of the units. Don Borenstein (**DB**), attorney for the Ocean Echo Condominiums, stated that the proposed building covers the entire site and the easement will only benefit some of the units and there has been no consideration in the design of the building to accommodate this issue. **DB** stated that there could be units that straddle parcel lines which would violate the easement rights. **DB** was happy to hear that the applicant and their council were willing to meet with the Ocean Echo Condo Association to try to work this out. **DB** stated to the Board that he did not know this project could be approved without having this issue resolved. **GP** stated that the applicant said the easement would benefit approximately one half of the project and would be controlled by key card access and asked why this would not ok. **DB** replied that the applicant has not presented a unit design showing the lot lines and it is not clear if units will straddle over to parcels without easement rights. **DB** went on to state that the parking garage is unified and residents with easement access would violate the easement by parking on the East side of the lot. **DE** asked **BMD** if there was a response from Town Council regarding the Easement. **BMD** stated that Town Council had not responded yet. **GM** asked **DB** if Ocean Echo was willing to work with the applicant. **DB** replied that his client would welcome the discussion and was surprised that a discussion had not happened yet. **PC** stated that there is a lot of speculation and asked the Board to look at the facts. **WC** stated that it is a very simple matter to exclude units which happen to straddle the line that delineates the easement. **WC** stated that they are willing to meet with Ocean Echo.

DG addressed the question regarding the 5 foot setback on Ocean St that was brought up in the last meeting. **DG** showed an updated rendering with a 5 foot set back on Ocean St. **LP** stated that she had a discussion with the Building Inspector regarding if the building was considered commercial or residential and stated that it would be residential. **LP** stated that the building would also require a 5 foot setback on Ocean Front S and that a condition was crafted that the applicant would need to submit a new plan which would meet the zoning requirements. **DE** stated that on Ocean St there would need to be a 10' setback unless the wall was fire rated which then would only require a 5' setback. **GP** asked **DG** if the walls were fire rated. **DG** replied that it is considered a rated wall. **DG** stated that he is not 100% sure given the configuration that maybe Broadway is the front. **LP** stated that the address of the site is the reason the applicant selected Ocean Front S as the front.

GP asked what the total square footage of the retail space would be including the 3 convertible units. **LP** stated that it is 7,187sf. **GP** asked what the total square footage for the project was. Dale Gienapp (**DG**) did not have that number but stated he could check his paperwork and get back to her with that information.

SP stated that he had emailed **BMD** on Friday a list of 11 conditions with reply's and asked the Board if he should read through them. **DE** replied not unless it is new information.

DE moved to close the public hearing. **WC** stated that there were individuals in the audience that would like to speak. **WC** stated for the record they do not agree that the zoning would call for a 5 foot setback on Ocean Front S. **LP** stated that the applicant had submitted to withdraw their special permit application. **DE** read a letter to **BMD** from the applicant dated 4/12/2018 requesting to rescind their special permit regarding the height of the building. **LP** stated that they did speak with Town Council on the proper way to address the request to withdraw the special permit and it was determined that the Board needs to formally vote whether or not to accept the withdrawal. **LP** stated that the Board could accept the withdrawal and not determine the special permit or you cannot accept the withdrawal and make a determination on the special permit. **GP** stated that the Board has received conflicting information and went on to state that the Building Inspector has determined the building to be over 65 feet and the applicant stated that the average height of the project does not exceed 65 feet. **LP** stated that the plans that were presented do show the building to be over 65 feet. **WC** stated that the Building Inspector has not ruled that the project exceeds 65 feet and went on to state that the Building Inspector has ruled that the cupolas and spires need to be included in the calculation of the height of the building. **WC** stated that the Overlay Zone has a unique definition of height which references the distance from the bottom of the lowest horizontal member to the average roof height. **WC** stated that the building inspector ruled that they did not qualify for the exemption on the spires. **WC** stated that when they recalculated the average roof height they realized that even without the exemption they fell below 65 feet. **DE** suggested that they deal with this once the public hearing is closed. **GP** asked for a motion to close the public hearing. People in the audience asked if they could speak. **LP** stated that the Board is only taking new information. **GP** stated that the Board will not rehash the same things over and over.

Paul Dakota (**PD**), Central Ave, stated that the Board should look at the merits of the applicants as they are pillars of the community. **LP** stated that the Planning Board is not making a determination on the applicants but are here to make a decision on the evidence that has been put before them.

Tom Saab (**TS**), 190 North End Blvd, stated that he has lived in Salisbury for 47 years and has had many different businesses that have brought tax dollars into Salisbury. **TS** stated that he wanted to address the tax payers of the Town of Salisbury. **DE** stated to **GP** that Mr. Saab is out of order. **LP** asked **TS** to make his point and stated that the Board has a long meeting in front of them. **TS** stated to **LP** that it is a public meeting. **LP** stated that this this is a public hearing to address any new information pertaining to this development. **TS** stated that the development would bring in approximately \$1.6 million dollars in tax revenue to the Town of Salisbury each year. **GP** asked if **TS** had the expense part of the equation and stated that this information had already been presented. **TS** stated that he felt that the taxpayers did not have an understanding about the amount of tax that the Town would collect. **TS** stated that there is zero risk to the Town of Salisbury. **GP** stated that is completely untrue. **TS** stated that currently the Salisbury Beach property owners pay approximately 43% of the taxes of the entire Town and once the project is completed the Salisbury Beach property owners will be paying 50% +/- of the taxes. **GP** stated to **TS** that this is not part of the Board's decision making. **TS** stated that the tax revenue from this project should be the main driving force to approve the project and would also be the beginning of a new era for Salisbury Beach.

Brent Byers (**BB**), 15 Ferry Lots Lane, stated that he owns 2 properties in Salisbury. **BB** believes in the Town and that Salisbury Beach will get better. **BB** stated that as of right now there are tons

of vacancies and businesses that are struggling to survive. **BB** stated that Salisbury has to be one of the only Towns in the United States who has not figured out how to make a beautiful beach work. **BB** went on to state to make it work you need year round residences and that is what this project is designed to bring. **BB** stated that the project will bring in \$1.4 million dollars in taxes to the Town. **GP** asked **BB** to explain the expense part of that equation. **BB** stated that this project puts the Town on a path for a much more vibrant beach community.

Tony Montisanti (**TM**), 81 Atlantic Ave, stated that he has been a homeowner since 1981 and has been coming to Salisbury Beach since he was 15 years old. **TM** stated that he loved Salisbury Beach and after seeing the project and the amount of money that it will bring into the Town he is amazed that people are against the project and went on to state that it is a great project that will bring people to the Beach year round.

Amy White (**AW**), 23 Liberty St, stated that she has vacationed at Salisbury Beach since she was 15 years old and went on to state that when she and her family began looking for a summer home they looked into buying at Ocean Echo but had concerns of looking out to an empty lot and decided to buy where they are now because they had young children at the time. **AW** stated that she did not know why the Town would turn away a project that will help Salisbury and went on to state that she wants to be proud of the community that she lives in.

GP asked for a motion to close the public hearing. **JMD** suggested that the Board should let people speak. **DE** stated that he understood people's desire to speak and is not opposed to continuing to listen to what citizens have to say but would like them to be very brief and to the point because the Board needs to make a decision tonight. **DE** suggested 15 minutes. **GM** asked the audience to raise their hand if they wanted to speak and counted 5 people. **GP** stated that they would have 3 minutes each to speak.

Ray Champagne (**RC**), 28 Commonwealth, read a statement from someone who wanted to remain anonymous who was in favor of the project and believed One Oceanfront would enhance the community.

Mike Walsh (**MW**), 170 Beach Rd. # 22, stated that he believes this project is a vast improvement over what exists today and went on to state that he believes what is there now is an unsafe place to be. **MW** asked the board to take this into consideration.

Fred Knowles (**FK**), 38 True Road, stated that he believes that Mr. Capolupo is the right person to get this job done and asked the Board to approve the project.

Paul Nolan (**PN**), Beach Road, stated that he is a strong advocate for the project and believes it will transform the beach into a true gem. **PN** stated that in the October 2016 Town Meeting that the residents of Salisbury overwhelmingly approved this and urged to Board to listen to the voters of Salisbury.

David Schaeffer (**DS**), 10 Atlantic Ave, stated that the project would be a great catalyst for revitalizing Salisbury Beach and asked the board to approve the project and be part of the revitalization.

Dean Borrelli (**DB**), stated that his family has been involved in the beach since he was 5 years old and that he was a business owner in Salisbury. **DB** remembers what the beach was like when the amusement park was there. **DB** stated that since the amusement park left the beach area has declined. **DB** thanked **WC** for all the work that he has done to begin revitalizing the beach and believes that this project would revitalize the area

Heather Fritz (**HF**), addressed the Board acknowledging the pressure and difficult decision that they have ahead of them. **HF** stated that if this project did not go through now the owners of the properties want to sell and there is a possibility of multiple different condo development being put there and believes this is our one hope at a development that will bring the most benefits to the entire Town.

DE motioned to close the public hearing for the special permit and site plan.

GM seconded.

Vote: 4-0, motion passed

LM abstained.

GP asked the Board to read through the site plan conditions and highlight the ones that they would like to have a discussion on. **DE** asked **BMD** if there were any differences between the conditions for the Site Plan and the Special Permit. **BMD** replied that the differences were the modification of the site plan and the time lapse between the special permit and the site plan.

GM motioned to approve the site plan with conditions and further discussion.

DE seconded.

Discussion:

LM wanted to discuss site plan condition # 20 section iii regarding flood zone acceptable stadium seating on the corner of Broadway and Ocean Front S:

LM stated that we all like the idea of the stadium seating but does not know how the Board can make it a condition as it is public property. **DE** stated that this condition is to produce the same concept but on the applicants property. **GM** asked **GP** if the Board is asking the applicant to cut into their original design for the stairs. **GP** replied yes. **GM** asked **DE** if it will lock the applicant in to change their design plan if the stairs are not approved to be placed on Town property. **DE** replied that the applicant is free to come back to the Planning Board at any time with a site plan modification. **DE** stated that if the applicant does a good faith effort to come up with a design that works and the present it to the Conservation Commission and DEP and it gets denied the applicant could come back to the Planning Board and say that this is completely impossible because they cannot get approval for the design that was endorsed by the Board. **JMD** stated the Board should ask to incorporate the rendering that was presented at the last meeting subject to obtaining the necessary approvals. **DE** thought it was a great idea and asked **LP** if it can be incorporated by reference. **LP** stated that the Planning Department could work language to incorporate this.

JMD asked for clarification on site plan condition 20 section ii regarding commercial activity on Ocean Front S:

JMD stated that he thought there were lot of issues around the notion of seasonal retail kiosks and thought the project was going in a different direction regarding this. **GP** stated that there was a lot of discussion about this and it is time for the Board to decide whether it should be a condition or not.

DE stated that at the last meeting the developers presented a conceptual drawing that showed the connection of the Boardwalk onto their property integrating it with the commercial space and there was lot of enthusiasm on the Boards part but it is not in the plans that were presented. **DE** went on to state that what the applicants diagram showed was a deck or boardwalk which was on property that is not owned by them or by the Town. **DE** stated that if the Board approves the project with conditions it keeps the project alive and encourages the developer to work with the Board going forward.

GP wanted to discuss site plan condition # 18 section iii regarding the 5 foot setback on Ocean St: **GP** stated that in regards to the setback on Ocean St we need to add Ocean Front South to the condition. **DE** stated the Board should propose an additional condition that prior to the issuance of a demolition permit the applicant must submit a revised site plan that conforms to all setback requirements in the Dimensional Control Table of the Zoning Bylaws of the Town of Salisbury.

GM wanted to discuss site plan condition # 18 section i regarding voids in the Western wall, allowing ocean breezes and morning light:

GM asked if the Board was asking the applicant to add voids to the project. **LM** stated that he did not feel the Board should get involved in design. **DE** stated that it was recommended by Abacus for the architect to use voids in order to be more consistent with the design guidelines. **GP** stated that one big building will not allow morning sun or breezes to pass through and does not make it a walkable neighborhood. **GM** stated that he didn't feel the Board should be involved with changing the design. **JMD** stated that the latest rejoinder by Abacus felt that the applicant had made significant progress in terms of the design and agrees with **GM** about not too involved with changing the design. **DE** stated that the use of voids doesn't mean that there will be nothing there and went on to say that changing the roof between the two towers would make it architecturally more interesting and more consistent with the design guidelines. **GM** stated that the Board would still be asking the applicant to change their design guidelines. **DE** stated that one of the missions that the Town has asked the Board to perform is to make a determination as to whether or not the project complies with the design guidelines.

LP stated in regards to the frontage on Broadway, she pulled assessor's map 32 for lot 78 which is listed as one of the parcels in the original application which has significant frontage on Broadway and the applicant states that a small portion of this lot will be used for this development and the remainder of it will be used for a future development. **LP** stated that the Board does not have an ANR to show that they are separating it from the development and the Planning Department would need to come up with the wording that would require an ANR to separate the lot. It is not the applicant's intention to use this lot as part of the development and the Board is not trying to make them but it is listed on their original application. **LP** stated at the last meeting the applicant said that this lot was not part of this project and the Planning Department assumed that the parcel was not included at all but we included it in the condition that states that it be commercial. **LP** stated that her concern is that the condition is not appropriate because it is not intended to be part of this development. **DE** stated that the applicant is also using it as access to the garage area so it is being incorporated into the development. **DE** stated that a temporary compromise could be that the applicant install an archway or something that celebrates the beach and prevents it from being open. **DE** stated that the goal for the zoning

of Broadway is to have one continuous uninterrupted façade. **DE** went on to state that if the applicant came up with a design for an entryway that was right on Broadway could be a way to mitigate it while they move forward with the rest of their plan. **DE** stated that it is clearly part of the applicant's proposal and there is no indication that it is not going to be moving forward as an entrance. **LP** suggested that the Board could condition that an ANR be done to separate the lot. **DE** stated that it is on the plan and what is on the plan should be built and not leave that area looking like it is waiting for development and incorporate it into the Broadway experience. **LP** stated that the Planning Department could work on a condition.

DE stated that he would like to discuss site plan condition # 19 section ii regarding valet parking: **DE** stated that there is no parking dedicated for the proposed restaurant on Broadway by the applicant and is concerned that if they chose to employ a valet it would hold up the traffic on Broadway. **DE** stated that the applicant needs to work with the Town or on their own property figure out a way to accommodate valet parking for their proposed restaurant. **DE** stated that if they do not have an approved valet plan they cannot use valets.

DE asked if the language was sufficient to give to Ocean Echo and the developer to work out details of a compromise between them. **LP** replied that language requires them to sit down and discuss and that the condition in front of you requires all units be able to access the easement. **LP** stated if they cannot reach an agreement the applicant will need to come back to the Board with an updated plan and the Town would need a new traffic study done by its traffic consultant. **LP** stated that Town Council is concerned with the ability to enforce only certain units having access to the easement.

GP asked if site plan condition # 18 was necessary. **DE** stated that it was significant to the project. **DE** stated that we may be able to work on the wording to soften it. **LM** suggested setting as goals and not specific requirements and ask the applicant to come back with a design that meets those goals. **GM** stated that he thought the Board should stay away from site plan condition # 18. **GP** stated that if you stay away from it "guideline A" would have no meaning. **GM** stated that he agrees with **LM** and feels that the Board shouldn't be cutting into the design that was brought forth to them. **DE** stated that one of the things that the Board can hang their hat on is that Abacus Architects had weighed in on this extensively and gave guidance to the applicant to employ additional design assistance. **DE** stated that so many of the conditions are geared towards the negotiation process and getting the applicant to narrow down what can be done. **DE** would like to leave site plan condition # 18 in the decision will give the applicant ample opportunity to work on that particular issue. **JMD** stated that the peer review architect has argued that the applicants have made significant progress. **JMD** suggested some language to use for the condition "continue to explore ways to provide voids in the Western wall, etc. **JMD** stated that the Board should not be so prescriptive to promote ongoing negotiations. **DE** liked the language. **GP** asked **BMD** to add to the condition.

GM wanted to discuss site plan condition # 19 iii regarding a dog park:

GM stated to **GP** it had been discussed that there are other sites for taking dogs for a walk. **GP** stated that it was addressed and went on to state that she feels that a development this large in a concentrated and highly environmentally sensitive area should have a dog park. **LM** stated that the applicant said they could accommodate a dog park in the courtyard. **DE** would like to revise the wording and take away the specific reference to Dog Park, which implies dog space only and

reword it to say a minimum of 500 square feet and keep the rest of the language. **DE** stated that the applicant would need to show the Board the revised plans.

GP stated that if there is no further discussion the Board should vote to approve the site plan with conditions.

Vote: 4-0 Motion passed

Request to Rescind Special Permit.

- a. The Applicant has requested to rescind the application because they believe that they are under the height the height that triggers the Special Permit.
- b. Please consider the follow when making a decision:
 1. In regard to the Zoning By-laws, the height of the building is determined from the bottom of the lowest horizontal structural support allowed by State Building Code to the average height of the main roof structure. The Applicant states that the proposed building height is 62'-0" compared to the 89'-0" allowed by zoning regulations. Notwithstanding the Applicant's height determination, it appears that the height was calculated incorrectly. According to the Zoning By-Law of the Town of Salisbury § 300-67 (2), "unoccupied architectural appurtenances to which there is no permanent access (cupolas, spires, chimneys, flagpoles, etc.) and comprising not more than 25% of the building footprint in plain view shall be exempt from maximum height limits." Since the proposed development, as shown on A-200; 201; A-202; A-211; A-301; A-303 A-304; A-306 306 A-307 of the Big Block Development Permitting Plan Set, dated August 1, 2017, shows architectural appurtenances exceeding 65', which require permanent access in order to comply with the building code, a Special Permit is required.

DE motioned to not accept the applicants request to rescind the special permit.

GP seconded.

Discussion:

GM stated that he did not agree with the motion and it should be the applicants right to rescind the special permit and asked **DE** to explain why he felt that the applicant not be allowed to rescind the special permit. **DE** replied that the Building Inspector already stated that the building exceeds 65 feet and the applicant states that it doesn't. **DE** stated that if the Board were to accept the withdrawal the site plan that was just approved would be invalid. **LP** stated that the Board has not been provided new plans from the applicant which would negate the special permit.

Vote: 3-1 motion passed

Gil Medeiros voted against it

DE motioned to approve special permit and read aloud the criteria.

JMD seconded.

Vote on special permit:

Gina Park: Yes

Don Egan: Yes

Marty Doggett: Yes

Gil Medeiros: Yes

GP thanked the applicant and wished them well. WC stated that he appreciated the time and the sincere effort that the Board has put in on this project but must regretfully inform them that the conditions that the Board have imposed on this project have killed it. WC stated that it is impossible for us to meet the conditions imposed and still have a viable project.

3. Adjournment

GP asked for a motion to adjourn.

GM motioned to adjourn

JMD seconded.

Vote: 5-0, motion passed

*** Documents provided at the meeting are on file in the Planning Office**

Minutes approved by: _____

Date: 6-27-2018