



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

**MEETING MINUTES- PUBLIC HEARING**

**Hearing Date: July 9, 2019 @ 7:00 pm**

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

**Member (s) Absent:** None

**Additional Persons Present:** Scott Vandewalle, Building **(Inspector)**/Zoning Officer

**(Chair)** person Pawlisheck called the meeting to order @ 7:00 pm. **(Chair)** also announces that the first case on the agenda, Case 19-11, will be heard at the end of the meeting per a request from the applicant. Also being taken out of order is **Case 19-5 405 North End Boulevard** (under New Business on the agenda).

405 North End Boulevard applicant Alan Sicard approaches the podium. **(Chair)** explains that when the applicant was here the last time, one of the individuals that voted on the petition for the variance had misunderstood some the information provided. As a result the Board asked Mr. Sicard back to review the case, which the Board has done and the Board will vote again. The vote will be by the (4) people who heard the case the last time. **(Chair)** reopens the case to reconsider. **(Mr. Henderson)** makes a motion to reconsider the vote on 405 North End Boulevard, Case 19-5. **(Ms. Tremblay)** seconds. **(Mr. DePetrillo)** votes to approve. Case now reopened as the vote was unanimous. **(Inspector)** states that Town Counsel has been notified of this. **(Mr. Sicard)** explains he is adding a smaller deck to the home as requested by the Board. The new drawings were submitted at the last meeting and no decision had been signed or recorded.

**(Mr. DePetrillo)** makes a motion to approve the variance for 405 North End Boulevard due to dimensional relief for the construction of a deck. **(Ms. Tremblay)** seconds the motion.

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

**1. Continued Public Hearings**

**Case No. 19-11 Petition for Relief- Finding (by Special Permit)** to allow for the extension or alteration of a pre-existing, non-conforming structure.

**Address:** 187 Atlantic Ave.      **Map 31, Lot 23**

**Applicant(s):** Michael Suprenant, Northeast Properties & Investments LLC

Per **(Chair)**, at the request of the applicant, this case will be heard at the end of meeting.

2. **New Public Hearings**

**Case No. 19-15 Petition for Relief- Variance** regarding a cupola that will exceed the 35' height restriction.

**Address:** 115 Railroad Ave.      **Map 32, Lot 209**

**Applicant(s):** Daniel Locapo

**(Attorney) Adam Costa**, approaches the podium and states his law firm is representing the applicant. His applicant is looking for a dimensional variance to exceed the height limitation. The bulk of the structure conforms to the 35 foot height limit; the cupola will be the access to the roof deck and will be partly enclosed for purposes of stairway access and it will reach 41 feet. The space is not heated or habitable. There will be a lift on the stairs for a relative. **(Attorney)** explains that because of the flood plain, the structure has to be elevated 10 feet so the consequence is that it is built on pilings, so there is no habitable space on first floor. He explains that there is a property at 108 Railroad Ave, they also (in 2012) sought similar relief and presented a similar justification. **(Attorney)** hands out the decision for 108 Railroad Ave. and explains this is a unique circumstance because of the flood plain, it is the FEMA flood maps dictating what the homeowner can do. The home is 841 square feet on each floor; quite modest. The hardship is not self-created and it is not detrimental to the neighborhood.

**(Mr. Descoteaux)** inquires what the square footage is at 108 Railroad Ave and is it larger? **(Applicant)** Mr. Locapo states that the owner of 108 Railroad Ave. shared his plans; he started at his size, but came back with a substantially smaller structure.

**(Ms. Tremblay)** asks if this case was presented in December. **(Attorney)** responds yes but there were questions on the shed. At that time there were not fully designed elevation plans and there are now. The shed platform has been removed.

Any abutters: None.

**(Mr. DePetrillo)** makes a motion to approve the variance for 115 Railroad Ave. for the cupola based on the dimensional variance of the property. **(Mr. Henderson)** seconds the motion.

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

**Case No. 19-16 Petition for Relief by Special Permit-Accessory Apartment** regarding the addition of an accessory apartment.

**Address:** 20 Locust Street

**Map 12, Lot 44**

**Applicant(s):** David Osgood

**(Attorney)** Adam Costa is representing the client and explains there are no exterior modifications, only the conversion of the walkout basement to an accessory apartment within the existing structure. The Board of Health confirms the current septic system is sufficient for the changes on the plan dated May 31, 2019. The Planning Board's recommendation was positive although they did have a question on the dual means of egress in the accessory apartment. **(Attorney)** indicates the Building Inspector has been involved and is familiar with the application. We are in compliance with an egress window and an egress door. Photographs are available. There will be (2) additional spaces. **(Chair)** inquires if the egress is covered under the building code and asks who will be living in that apartment. **(Attorney)** indicates there is no one in mind at the moment. **(Inspector)** states he has not been working with the applicant recently and that a window egress does not constitute a second means of egress. It has to be an ambulatory egress. **(Inspector)** states the applicant's interpretation of the code is incorrect and it will need to be changed.

**(Mr. Henderson)** states this is a Building Inspector issue. The Inspector will not release a permit without the changes. **(Inspector)** explains the applicant will not get an occupancy permit without changes to the plans. There has to be (2) independent means of egress that the person can walk through. He explains to the Board the vote right now is on an accessory apartment.

**(Mr. Descoteaux)** states an accessory apartment has to have the owner in one of the units. Mother-in-law means a family member in both units.

Abutters: None.

**(Mr. Henderson)** makes a motion to grant a special permit for an accessory apartment at 20 Locust Street. **(Mr. DePetrillo)** seconds the motion.

**VOTES:** Ms. Pawlisheck, Paul Descoteaux and Ms. Tremblay vote in favor of the motion. All members express their vote individually and verbally. (5-0). Motion passes.

**Continued Public Hearings**

**Case No. 19-11 Petition for Relief- Finding (by Special Permit)** to allow for the extension or alteration of a pre-existing, non-conforming structure.

**Address:** 187 Atlantic Ave.      **Map 31, Lot 23**

**Applicant(s):** Michael Suprenant, Northeast Properties & Investments LLC

**(Chair)** states this case was previously heard, continued and is now reopened

**(Attorney)** Mark Griffin, once again representing the applicants, approaches the podium and explains the new plans that were given out since last meeting shows parking on the front property where 2 spaces will be allocated. At the last meeting, no parking had been proposed which raised concerns from the Board and abutters. Since that meeting his clients have acquired the property in front and they plan on creating 4 parking spaces on that property; 2 of which will be devoted to the new property.

**(Chair)** states another concern is whether or not this multi-family use is allowed here. Town Counsel opinion has been shared with Attorney Griffin and Attorney Caffrey. **(Attorney)** Griffin states he agrees with it as the property/structure itself is non-conforming, the use is not changing, the pre-existing legally non-conforming does not need relief. **(Attorney)** states he agrees his applicant is eligible for a finding as it is not substantially more detrimental to the neighborhood than the existing structure

**(Inspector)** states that in looking at the new plan with parking, the Town's definition of zoning for parking spaces should be on-site spaces and these are on another piece of property. It needs to be looked into before any decision made.

**(Chair)** states it always a concern when using another piece of property to comply, unless that piece of property is somehow incorporated into the lot we're talking about, then it can be separated or sold and the compliance goes away with the sale.

**(Inspector)** states agreement.

**(Attorney)** states there is no ability to put onsite parking when you look at the size of the lot and building. There was no parking there before and since it is pre-existing legally non-conforming for parking, we can move forward with no parking spaces on site. The applicant(s) are providing something in addition to what we are legally obligated to provide. The applicant would entertain a condition from the Board if they were to grant the permit, such as that (2) spaces be provided on the property in front (185 Atlantic Ave) and a recorded easement.

**(Chair)** inquires if the non-conforming parking continues on as part of the non-conformance.

**(Inspector)** states this case is splitting pre-existing non-conformity of structure vs. use. The use may be pre-existing non-conforming. The structure is a different issue. They may need a variance. The town needs assurance that it will be long lasting and functional. The assessor will be involved also.

**(Attorney)** states the discussion at the last meeting; that the applicant is going above and beyond what was required. The applicant even bought the property in front of this property and had they not been able to buy the separate parcel, they could offer no parking at all. Currently, the structure has no parking, and it could stay the same.

**(Chair)** states that most of the new buildings are being raised and has parking underneath.

**(Attorney)** again states there is no way to get there although house being raised.

**(Mr. Descoteaux)** states there is some allotment for the (3) family, but only 2 spots. He inquires who would not get one? **(Attorney)** states that is not yet known. They may be assigned to a unit or on a first come first serve basis.

There is a general discussion of the Board about parking; such as stairs or a shed were moved, dimensions of the lot, configuration of stairs.

**(Attorney)** states his client feels the Board maybe mis-apprehended the Town Counsel opinion that his applicant is not eligible for a finding. My client is here appropriately for a finding. Please confirm that is the Board's opinion.

**(Chair)** confirms that yes, the Town Counsel says it is a finding. **(Chair)** questions if the applicant has concerns about the level of compliance based on that? **(Attorney)** responds that is correct, based on the parking. **(Chair)** states it will weigh in on your requirement of more detrimental or not. A variance would have stronger standards. The parking in this area is important.

**(Mr. Henderson)** inquires about the design of the new building. Why can't it be driven to and have parking spaces? **(Attorney)** responds that it is the way the structures are placed.

**(Applicant) Andre Dubois**, part-owner of property, approaches the podium and states that if there is a way to satisfy the parking situation they will look into it. They will still need an easement from 185 Atlantic Ave. **(Mr. Henderson)** states you could then park (6) cars under the structure and the neighbors would be happier.

**(Chair)** inquires as to what the Board's leeway is on conditions on a finding? **(Inspector)** responds that it falls under a special permit consideration. You can put conditions on it.

**(Chair)** states the Board can apply conditions to this if we agree to move forward with it. It would be contingent upon having parking more appropriate for a 3 unit. It should have 6 spots and if there is the availability under the building to park 6 cars it would be in your best interest and the neighbors.

After conferring with his client, **(Attorney)** states they will ask for a continuance. They have reservations because of the flood zone they are in. **(Inspector)** advises to confer with himself and Conservation.

Any abutters: Yes

**Abutter 1: (Attorney Andrew Caffrey)**, representing an abutter, Michael Kobos, approaches the podium and states he is discouraged and disappointed by the Town Counsel opinion and how she came to a finding as the appropriate vehicle for the reconstruction of a (3) family structure. **(Attorney)** requests that the Board read the bylaw. He states that Chapter 300 mimics Chapter 40A Section 6 in terms of what happens when zoning laws are changed. It is clear that reconstruction is distinct from extension or alteration. The board's questions earlier touched on this. When reconstructing, it is all new so what do you have to comply with. **(Attorney)** continues to explain that a finding is for a (2) family, not a (3) family structure. The word reconstruction is not noted in the bylaw. Also, he points out that Town Counsel should correct 300-21A concerning the footnote. A whole line was dropped under Section 6. A finding is inappropriate.

**(Chair)** asks Attorney Caffrey about his client and why this particular building is an issue with his client. **(Attorney)** responds that it is mostly the parking issue. **(Chair)** responds the Board has asked them to put in (6) spots. **(Attorney)** responds that Salisbury Zoning and Planning should be looking to make more conformity in that area. It would be better as a 1 or 2 family home. Don't keep the density and congestion.

**Abutter 2: Robb J. Osinski**, 183 Atlantic Ave., is representing the condo trust and approaches the podium stating his structure is a (3) family. They are generally supportive of development. The neighbors want to see things turn around and the older buildings improved. The parking is the issue. **(Mr. Osinski)** states he was very involved with Zoning on the beachfront and he thinks a variance is required. When the structure at 183 Atlantic

Ave. was developed, there were 5 units; 2 units were eliminated for parking which now can hold 20 cars. **Mr. Osinski** continues to discuss both properties; 185 and 187 Atlantic Ave. **(Chair)** states they can only discuss 187 Atlantic Ave. as that is what they are developing. **(Mr. Osinski)** suggests merging the (2) properties or putting in a strong easement. He states he does not see a hardship here. The property was acquired just recently and these things could have been thought through before buying it. Real problem is parking. He inquires if the Board has physically seen the sight? The Board has not.

**(Attorney Griffin)** states the applicants have narrowed down the issues before the next meeting. They may possibly pursue designing the structure differently so parking can go under and will confer with the Building Inspector and Conservation to see if it is in compliance in the flood zone.

**(Chair)** states to add to the list how the access will happen with regard to an easement over 185 Atlantic to get to 187 Atlantic Ave.

**(Inspector)** states that even if you have the (4) parking spaces, you still need an easement for walking to them.

The Request for Continuance Form is completed.

**(Mr. Descoteaux)** makes a motion to continue Case No. 19-11 to July 23<sup>rd</sup>. **(Ms. Tremblay)** seconds the motion.

**VOTES:** Ms. Pawlisheck, Mr. DePetrillo and Mr. Henderson vote in favor of the motion. All members express their vote individually and verbally. (5-0). Motion passes.

**A. Minutes**

None

**B. Correspondence and Other Board Business**

**New Business**

29 Elm Street – Site Visit discussion.

**(Mr. Descoteaux)** did a site visit but did not have any knowledge of what was supposed to be planted. **(Mr. Henderson)** saw plantings but they are small. **(Inspector)** states the plans showed the plants at full growth which they aren't today; the developer said full growth would be in 1 or 2 years.

(Mr. Descoteaux) states there are wide open spaces with no plantings. (Chair) requests a copy of the plan showing the growths and follow up with Joe Serwatka. It will be put on the agenda for the next meeting.

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

None

**D. 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** for adjournment was made by Mr. DePetrillo, Mr. Descoteaux seconds and approved by a 5-0 vote. Meeting is adjourned at 8:25 pm.

Respectfully submitted by Teresa Mahoney, Board Secretary and accepted at the August 27, 2019 meeting of the Zoning Board of Appeals.

Accepted as Presented;



Chairperson Susan Pawlischeck

Cc: Town Clerk

**Next Scheduled Public Hearing: July 23, 2019**