



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

**MEETING MINUTES- PUBLIC HEARING**

**Hearing Date: January 22, 2019 @ 7:00 pm**

**Members Present:** Susan Pawlisheck (Chairperson), Derek DePetrillo (Secretary), Kevin Henderson, Linda Tremblay

**Member (s) Absent:** None

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

(Chair) person Pawlisheck called the meeting to order @ 7:04 pm.

(Chair) explains to applicants that there is only a (4) member board so the decision has to be unanimous.

**1. Continued Public Hearings-1**

**Case No. 18-27 Petition for Relief- by Administrative Appeal** regarding an appeal of the Zoning Enforcement Letter issued by the Building Inspector dated October 24, 2018 referencing Section 5.300-75 (A) (1) (Inclusionary Housing Requirements)

<b>Address:</b> 71 North End Blvd.	<b>Map 33, Lot 26</b>
73 North End Blvd.	<b>Map 33, Lot 24</b>
75 North End Blvd.	<b>Map 33, Lot 28</b>

**Applicant:** Tom Patenaude Homes, Inc.

(Attorney) Samer Obeid is again representing the applicant and recaps some of the prior meeting such as the land was bought in 2016, approval was received to build each lot separately, the foundation permit was issued, and then the building permits. Later on October 24<sup>th</sup> the Building Inspector rendered a decision which is what his client is appealing.

(Attorney) states his argument is that Building Inspector's decision should be reversed. The Town's bylaws prohibit the Building Inspector from issuing a building permit until reviewed by the Planning Board to determine whether Planning and development has verified, in writing, that all conditions have been met – to the Building Inspector. The zoning bylaw would be in complete contradiction with the actual results. Also the zoning letter itself gives no indication on why the Inspector changed his mind and imposed these requirements. There were no changes in conditions at the sight.

**(Attorney)** then discusses the financial hardship of the decision as all planning was based on 8 units.

**(Mr. Henderson)** confirms the units are on (3) different lots.

**(Chair)** states the Board received the legal opinion from Town Council this week.

**(Mr. Henderson)** states that in looking at past Planning Board minutes, Mr. Eagan thought the project should include Inclusionary Housing. However, Mr. Henderson states it is not that Board's decision. It is the Department of Planning and Development; not the Planning Board.

**(Chair)** states that what is before the board is that 3 difference permits were issued, there was no mention of inclusionary housing. The Planning Department was included in that decision. The due diligence should have been done up front.

**(Mr. DePetrillo)** asks for more information on the financial harm. **(Attorney)** states the loss would be about \$70K which is the whole profit.

**(Chair)** states it's likely the Inclusionary Housing should have been applied, but it is too late.

**MOTION:** **Mr. Henderson** made a motion to repeal the Building Inspectors decision. He states Tom Patenaude Homes, Inc. is not required to be included in the Inclusionary Housing Requirements. **Mr. DePetrillo** seconds the motion.

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

#### **Continued Public Hearings-2**

**Case No. 19-01 Petition for Relief – Variance** regarding a proposed residence exceeding the maximum height allowed and a proposed shed which will be located in the side and rear setback areas.

**Address:** 115 Railroad Ave.

**Map 32, Lot 209**

**Applicant:** Daniel Locapo

**(Attorney)** Brian Winner is again representing the applicant. There are 2 aspects of the single family home at 115 Railroad Ave before the Board. One variance is for the shed platform which is in the setback in the rear of the property) and the other is the height variance up to 40'+.

**(Attorney)** states that per the Board's request, he reached out for them to be here (the owner and the engineer). Neither one could attend tonight. The client/applicant is in California and the engineer didn't do the profile drawings that were being questioned. He only did the site plan. The applicant did the drawings.

**(Attorney)** states the Board had raised a few questions. The minor of the two would be the shed.

**(Chair)** – states it has been brought to the Board's attention that the shed is not completely on Mr. Locapo's property and therefore cannot be constructed. It seems that part of it is built on the street.

**(Attorney)** wants to confirm that the location of the platform, as it exists today, actually straddles the property line? **(Chair)** confirms some of it is on Libby Ave. which is a street, and it cannot be built on a street. **(Chair)** states we cannot move forward with the variance because it cannot be built on the street.

**(Attorney)** states he will look into this; this issue was never raised previously.

**(Inspector)** tries to clarify by explaining the property line and where the right of way is; it cannot be blocked. He has overbuilt onto Libby Ave.

**(Attorney)** asks if he can return after looking into it. As it does not impact the height variance he would like to proceed.

**(Chair)** asks if the applicant is asking for a continuance for the variance for the shed.

**(Attorney)** replies yes. **(Chair)** states they cannot consider a continuance on it because it cannot be constructed. The Board cannot discuss a variance for something to be built on the street.

**(Attorney)** states his client may find some loose end.

**(Inspector)** suggests the applicant should maybe withdraw without prejudice; and then return before the Board if any information is found differing from the Town's.

**(Attorney)** states he wishes to withdraw the case without prejudice.

**MOTION:** Mr. DePetrillo made a motion to allow the applicant to withdraw without prejudice, the variance for the shed for 115 Railroad Ave. Mr. Henderson seconds the motion.

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

**(Attorney)** states there was a question about a handicapped access and where the reference came from. And why was it designed with the stated dimensions? **(Attorney)** states his client's mother needs a wheelchair access to the deck. That is the reason for the extra width. The wheelchair has to get up and down.

**(Attorney)** discusses another question from last meeting: if other neighborhood properties had a walk out roof deck. He states that (2) were found in proximity. Addresses are 108 and 107 Railroad Ave. Both have roof decks; 108 has a cupola and 107 has the bump out. **(Attorney)** presents pictures. He continues to explain that one is 41 feet, 10 inches high which is more than what his client is asking for. The other one has (3) floors of living space; his client will only have (2) floors of living space.

**(Mr. Henderson)** requests the Board look at page 3 of the drawing; particularly the measurements: there seems to be a discrepancy in the south view plan. The (2) sides are different; there is a (3) foot difference. **(Mr. Henderson)** would like to know which one is correct.

**(Mr. Henderson)** also inquires as to why the framing is two feet thick.

**(Attorney)** states he does not know the answer.

**(Mr. Henderson)** states that is a lot to be added to each floor.

**(Chair)** states the point is that does he really need a variance for that height? There seems to be room to bring it down. **(Chair)** states again that the Board needs to talk to the homeowner and or the engineer.

**(Chair)** states the Board still has more questions and the drawings presented are not finalized; this request may be untimely; and the Board feels there is room for this building to be shorter

**(Attorney)** states he wishes to withdraw without prejudice. He thanks the Board for their time and states he would like to resolve the issues and then return. He would like to withdraw without prejudice with the intent to resolve those issues.

**MOTION:** Mr. DePetrillo made a motion to allow the applicant to withdraw without prejudice, the variance for the height requirement for 115 Railroad Ave. **Mr. Henderson** seconds the motion.

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

## **2. New Public Hearings**

**Case No. 19-02 Petition for Relief- Finding by Special Permit** regarding an extension of an existing non-conformity to allow for the construction of a 30.4' x 10' bow faced deck to be constructed at the rear of the structure and attached to the existing side entrance landing.

**Address:** 23 Commonwealth Ave.      **Map 36, Lot 54**

**Applicant(s):** Marian and Azar Korbey

**(Chair)** explains to applicants that there is only a (4) member board so the decision has to be unanimous. Applicant will proceed.

**Mr. Matt Steinel**, from Millennium Engineering is representing the applicants and approaches the podium. He explains the proposed deck will be on the ocean side portion of the property and presents the plan which shows the rear of the structure and explains that on the northerly side there is a landing with set of stairs coming up to a rear entrance. The applicants wish to extend the non-conformity to come out on the deck in the rear. The extensions are no worse than the existing structure itself.

**(Mr. Steinel)** explained that neighbors in area were spoken to. Mr. Pascucci, 25 Commonwealth Ave., lives next door and constructed a similar deck. The proposed deck will be a similar decking style material; flow through decking for sunlight and water; Conservation has imposed this type of decking on the beach. **(Mr. Steinel)** states the applicant is here tonight specifically for relief from the dimensional setback requirements; to allow for the extension of the landing and southerly edge of the deck as it relates to side setbacks.

**(Ms. Tremblay)** inquires if the Conservation Board has any purview over this?

**(Mr. Steinel)** explains that normally the plans are submitted concurrently but in the case Zoning should have been addressed first, prior to Conservation. They have up a site walk and the plans have been submitted to DEP; there is not a response from DEP yet, only a file number. The applicant is working through concerns with Conservation.

**(Chair)** asks for abutters.

**Attorney Brian Winner** approaches the podium and relays he is representing Mr. Shaheen, 21 Commonwealth Ave. He is a direct abutter. **(Attorney)** states he does not have a question on the application itself; he has a procedural question. **(Attorney)** has looked into the permitting history for this lot they uncovered that this construction was built pursuant to a variance so is not actually a pre-existing non-conforming use. His research shows that in 1988 the one lot was split into two by a variance. It allowed for (2) 6,000 square foot homes; this being one of them.

**(Attorney)** is questioning if the right relief is being requested at this time; it appears that an amendment to the variance is needed, not a Section 6 modification or expansion of an existing non-conforming use.

**(Chair)** states that normally a pre-existing/non-conforming predates the zoning bylaws.

**(Inspector)** states it predates any changes to zoning; if there were subsequent changes to zoning, they become pre-existing/non-conforming; not just from 1978; from any town changes.

**(Chair)** states this property was built non-conforming. **(Inspector)** states it was built by a variance to be non-conforming. It was not pre-existing in 1978. It would not be part of the pre-existing non-conforming. **(Inspector)** states he was not aware there had been another variance on the property.

**(Chair)** states the Board needs to consider this as a variance as opposed to a pre-existing non-conforming

**(Mr. Steinel)** states the variance is not related to the setbacks, it is related to the 6,000 square foot home being constructed. It seems there were no zoning setbacks. It seems it is the size of the lot; not the structure. It was an undersized lot.

**(Inspector)** states he thinks the Board doesn't have to deal with the size of the lot. If there was an existing home on there, you don't lose the use because of the size of the lot. If there wasn't a home, you may fall under the 1978 exemption. It seems the variance was for setback changes.

The owner, **Mr. Azar Korbey** approaches the podium and explains the property background: it was bought in 1988 with David Beshara (?). It was a 12 square foot lot and the prior owner never did anything so the one lot status remained. Upon buying the lot from the Reusch family, the (2) buyers were given permits for two-(3) bedroom lots. The lot was split in the middle and surveyed. Mr. Beshara later sold to Mr. Shaheen. All procedures were followed; the buyers went before committees and built the houses.

**(Azar Korbey)** explains that his elderly mother resides with them and that 10 years ago, they had to get handicapped access to her bedroom so had to go for 2nd variance to extend her bedroom. Also, a fence was put up separating the 2 properties. At the time, it was assumed it was right on the property line but it is 6 inches onto Mr. Korbey's property line. All surveying shows a proper setback from the property line at 10 feet.

**(Mr. Henderson)** inquires as to what is the extension of the variance?

**(Mr. Steinel)** states the non-conforming set of stairs is greater than the 25 feet; it does not conform to the setbacks due to the size of the stairs. The intent is to extend the landing at the top of the stairs to connect to the deck in the rear for easy access from the stairs and from the side entry to the deck. That is an extension of a non-conforming use right there.

**Marian Korbey**, also an owner, approaches the podium and states that the deck was in the original plans and never done and due to a recent law change, they have decided to do it now. **(Marian Korbey)** explains why the stairs are (4) feet; due to access for a wheelchair.

**(Chair)** explains the matter before the Board is whether or not this is a finding, as in not more detrimental pre-existing non-conforming or is it a request for an extension for a variance as one side is not in compliance and it was built with a variance. Does the Board need a different submission from the applicant to proceed?

**(Inspector)** explains that a finding is meant to protect a people from the Town zoning changes and that is not what created this. If it was created by (2) variances, then it would require an additional variance to make additional changes to it. It should be withdrawn and resubmitted as a variance and re-advertised as a variance.

**Board** discusses a variance versus a finding and states that any future work will need a variance application. **(Inspector)** states that the house was created non-conforming by a variance. You cannot make more changes without a variance, even if staying within the setback.

**(Chair)** states that this is not an extension of a pre-existing/non-conforming; and it would be best to come back before the Board with a variance. **(Inspector)** makes a suggestion to withdraw.

**(Azar Korbey)** confirms why a variance is needed; that being that the side stairs and the landing are the problem.

**(Inspector)** states that by adding the deck on, it is a variance.

**(Marian Korbey)** states that if we (applicants) do not try to extend the stairs/platform, we would only need a variance for the deck itself? **(Chair)** confirms yes. **(Marian Korbey)** questions that if they need the little platform, then the stairs would be in danger? **(Chair)** confirms that no, the applicants would not lose anything they already have.

**(Mr. Steinel)** makes a request to withdraw the application without prejudice so the applicants can resubmit.

**MOTION:** **Mr. Henderson** made a motion to allow the applicants to withdraw without prejudice. **Mr. DePetrillo** seconds the motion.

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

**A. Minutes**

None

**B. Correspondence and Other Board Business**

None

**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. Henderson, Mr. DePetrillo seconds and approved by a 4-0 vote. Meeting is adjourned at 8:25 pm.

**Next Scheduled Public Hearing: February 12, 2019**

Respectfully submitted by Teresa Mahoney, Board Secretary and accepted at the February 26, 2019, meeting of the Zoning Board of Appeals.

Accepted as Presented;



Chairperson Susan Pawlischeck

Cc: Town Clerk