



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

**MEETING MINUTES- PUBLIC HEARING**

**Hearing Date: January 8, 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 @ 7:05 pm.

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

**1. New Public Hearings**

**(Postponed from 12-11-2018 meeting)**

**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 representing Mr. Patenaude and approaches the podium.

**(Attorney)** states the nature of the dispute is a retroactive application of the Inclusionary Housing requirements. **(Attorney)** explains the history of the building permits applied for and also the ANR through Planning. The building permits were finally issued in July, 2018 and construction commenced. The Building Inspector's decision was not issued until October 24, 2018. At this point Tom Patenaude Homes had already made one of the buildings weather tight. Everything to this point, such as financing, appraisals, profit calculations and more were reliant upon the building permits that were issued.

He states it is unfair to go back retroactive now to include the housing requirements as it injures Patenaude Homes and would render the project not profitable. **(Attorney)** states Mr. Patenaude had discussions with the **(Inspector)** prior to the issuance of the building permits. He explains the original plan was to have the Inclusionary Housing Requirements and build an additional residential unit in order to account for additional costs that would be imposed. This was the initial plan; however, after a discussion with the Building Inspector, Mr. Patenaude was encouraged to apply for only (3) separate building permits. **(Attorney)** states this was a known issue prior to the issuance of the permits in February and it was discussed by the Planning Board in February 2018.

**(Attorney)** states the meeting minutes are attached as Exhibit 3 and discusses the contents of the planning board minutes. **(Attorney)** continues that according to the minutes, a letter would be sent to the Building Inspector from the Planning Board that they disagreed with his decision on not sending it to site plan review. The Planning Board also recognizes that it would be unfair to put Mr. Patenaude in the middle of a dispute between the Planning Board and the Building Inspector as it has nothing to do with the applicant. Further minutes are discussed and **(Attorney)** states he is not sure if the letter was ever issued; he has requested a copy from the Town and it cannot be located. His conclusion is that the letter was never sent.

**(Attorney)** states his legal arguments for this case are that the Building Inspector's decision was arbitrary and capricious; why did his mind change from February to July and there was no change in the building plans from February to October. **(Attorney)** states it should be reversed.

**(Attorney)** also states there is a tieback to the Zoning bylaws for the Inclusionary Housing Requirement which lays out a process; building permits are not issued until there is a determination that the housing requirements have been met. This allows builders and developers to know exactly what to expect. They are not going to start building and then have a change. The **(Attorney)** also argues that it is not clear that this particular project is subject to the housing requirements. He quotes Chapter 30 Article 13, Section 30075 A1 which defines if the requirements will apply to this project. Discussion continues on the requirements that require a special permit from the planning board. Definitions are noted as multi-family, mixed used development, or any residential development. **(Attorney)** states that the requirements do not apply because a special permit was not needed from the Planning Board. It was a multifamily residential development.

**(Chair)** explains that the Board is anticipating clarification and an opinion from Town Counsel; some information was received but not the clarification that is needed. The board would like to wait for this information.

**(Chair)** asks if any abutters present. There are none.

**(Chair)** states the Board will not render a decision this evening.

**(Attorney)** states agreement and asks if the Board anticipates the applicant to return after the legal opinion is received.

**(Chair)** states the next meeting is January 22<sup>nd</sup>. In anticipation of Town Counsel providing more clarification of the legal points, the case should be continued.

**MOTION:** Ms. Tremblay made a motion to continue this application to the January 22, 2019 meeting. Mr. DePetrillo seconds the motion.

**VOTES:** Ms. Pawlisheck votes in favor of the motion. Mr. Henderson votes no on the motion. All members express their vote individually and verbally. (3-1). Motion passes.

**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

**(Chair)** notifies applicant of the (4) member Board and not sure when a 5<sup>th</sup> member will be joining.

**(Attorney)** Brian Winner, from Mead, Talerman & Costa LLC is representing the applicant and is prepared to proceed. He states his client is requesting zoning relief with (2) separate variances and shows the existing conditions and the proposed conditions. He explains that the project concerns a vacant non-conforming lot which was created in 1915. It is non-conforming under the current zoning; there is no dwelling but there is a platform in the rear of the lot which will be for a shed for storage.

**(Attorney)** explains the property is in a flood plain and the structure needs to be elevated 10 feet off the ground. In raising the 2 story structure up off the ground, that makes the first 10 foot section non-habitable space; there is an entryway there. Because of that, the property would go above the 35' requirement. The proposed dwelling is otherwise conforming. It is conforming in the front and side yards; the area is non-conforming but that was pre-existing non-conforming. The variance needed is for the height. The property is elevated and since there is a stairwell, this exceeds the

35 foot limit. This is not habitable space; it is the enclosure for the stairwell. Total height is 40'6". The habitable space is within the 35 foot limit.

**(Attorney)** states the other aspect looking for relief is for the platform shed which is already constructed. He states the zoning bylaw restricts accessory structures. They cannot be in the setback. Another provision requires that they be 10 feet outside of that. There is not enough space on this lot to get a conforming structure and get the platform shed in the same space. The shed itself (there will be no storage space on the grade level) is for practical storage on grade level and it is consistent with other properties in the area.

**(Attorney)** touches upon the 4 specific zoning requirements for a variance.

1<sup>st</sup>- there are soil and topography conditions that justify the variance.

2<sup>nd</sup>- the applicant is looking for a residence that is consistent with other uses in the neighborhood; looking to get what is used and available in the neighborhood. Absent the variance, he can't have storage space or access to roof.

3<sup>rd</sup>-the unique conditions are not a result of his own actions. He did not create the lot or the dimensions. The applicant is trying to work within the parameters of this lot in order to get a residence in the neighborhood.

4<sup>th</sup>-his plan will not be any more detrimental or encroaching than any of the abutting properties to left or right or across the street.

**(Chair)** asks for any abutters present.

**(Abutter) #1:** Mr. John Drew, 123 Railroad Ave. requests to see the drawings. Mr. Drew states there is already a platform in place which is very close to the home next door. He asks what the setbacks are for the shed; plans show the dimensions.

**(Chair)** inquires why anyone would put anything that is non-conforming on an empty lot before coming to the ZBA, (meaning the construction of a platform).

**(Attorney)** cannot answer this question; either the homeowner or the engineer has to answer this.

**(Inspector)** states only a foundation permit was issued as that would not affect the height.

**(Chair)** asks if the applicant had to get something for a slab for the shed?

**(Inspector)** states that if the shed is under 200 square feet there is no need for a permit. For the record, he owned the house next door so he started the shed then.

**(Mr. DePetrillo)** questions a part of the application that indicates a handicapped egress to the roof deck is a hardship. **(Attorney)** responds that it is sometimes required for roof access and he is not sure why it is in the application.

**(Mr. DePetrillo)** states the application also mentions this new building would be similar to other buildings in the area with roof decks. **(Mr. DePetrillo)** questions if they are all over 35' or is this the first one. **(Attorney)** does not know as he is not knowledgeable about the neighborhood.

**(Abutter) #2:** Nicole Stevens, 62 Railroad Ave. resides in a single level ranch. She is concerned that the sun will be blocked until late afternoon for all single level homes because Salisbury is on trend to building upward anywhere and everywhere. She inquires if the property has parking? **(Attorney)** confirms yes.

**(Ms. Tremblay)** asks how many of the roof decks around her are covered. Ms. Stevens states that none are; they entertain up there.

**(Chair)** states to the Attorney that he refers to this living area as a non-livable space. She sees it as functional; it is enclosed and usable.

**(Attorney)** states it does not have furniture or any living accommodations; it only serves to protect the stairwell; it is not a picture window or skylight; it is not space that benefits the habitability of the house. The only function is an ingress and egress to deck.

**(Ms. Tremblay)** asks if someone can define the size or dimensions of a cupola? **(Chair)** states regardless of the size of the cupola, the variance request is for the height of the cupola.

**(Board)** discusses the livable space question, if there is a hardship for the Board to grant a variance for the height?

**(Mr. DePetrillo)** asks if the building has to go up to the 40 feet?

**(Inspector)** advises the Board not to assume that all new properties are built 10 feet off ground. Some are not required to but some are. Some do it for parking; sometimes selective sometimes required. In this case it is required.

**(Chair)** questions if the roof deck can be accessed by putting a structure there.

**(Attorney)** states he does not know the code requirements. He states that maybe a reconfiguration is possible but he is not sure how flexible the plans are.

**(Mr. DePetrillo)** asks if there was any reason why the client and engineer couldn't attend the meeting.

**(Attorney)** will request their presence at another meeting if there is one. He does not have some of the answers.

**Attorney Winner** requests a **continuance**.

**MOTION:** Mr. DePetrillo made a motion to continue the 115 Railroad Ave to the January 22, 2019 meeting. Ms. Tremblay seconds the motion.

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

**A. Minutes**

**November 13, 2018** meeting minutes needed to be approved and then signed by the (Chair).

Mr. Henderson makes a motion to accept the minutes; Mr. DePetrillo seconds. Minutes approved by all Board Members.

**November 27, 2018** meeting minutes needed to be approved and then signed by the (Chair).

Mr. Henderson makes a motion to accept the minutes; Mr. DePetrillo seconds. Minutes approved by all Board Members.

**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.

(Ms. Tremblay) discusses a newspaper article she saw regarding the Board being required to again make a decision on the signs on Route 95.

(Chair) states that she and the (Inspector) are waiting for something official from the state. If it does come back to the Board, it will be added to the agenda and will be a public record.

**Motion** for adjournment was made by Mr. Henderson, Mr. DePetrillo seconds and approved by a 4-0 vote. Meeting is adjourned at 8:10 pm.

- 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.

**Next Scheduled Public Hearing: January 22, 2019**

Respectfully submitted by Teresa Mahoney, Board Secretary and accepted at the February 12, 2019, 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