



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

MEETING MINUTES- PUBLIC HEARING

Hearing Date: May 28, 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, Building (Inspector)/Zoning Officer

New Members present and introduced: Paul Descoteaux, Member, Drew Dana, Alternate

(Chair) person Pawlisheck called the meeting to order @ 7:00 pm.

1. Continued Public Hearings

Case No. 19-05 Petition for Relief- Variance regarding dimensional relief for the construction of a 16' X 16' deck.

Address: 405 North End Blvd.

Map 35, Lot 33

Applicant(s): Alan J. Sicard

(Chair) explains to applicant that there is only a (4) member board so the decision has to be unanimous. There are (2) new members, however they were not on the Board for the initial hearing.

(Mr. DePetrillo) reads the correspondence from an abutter; Mr. and Mrs. Bernard Zannini.

(Mr. Sicard) approaches the podium. He states he narrowed the deck to 14 feet, which was suggested at last meeting and new drawings are presented. (Chair) states that per the correspondence and what the Building Inspector saw, was that the pilings are already up. (Mr. Sicard) states he will remove the (2) current pilings closest to the property line and will not use them.

(Mr. DePetrillo) inquires if the applicant has spoken to the abutters about the issues in letter as they are concerned about it being so close to their property. (Mr. Sicard) responds that it is not that close to their property as the deck is on the other side of the property.

(Chair) inquires if any abutters? NO.

(Chair) states that because Mr. Dana is an alternate he will not be voting. (Mr. DePetrillo) states that because Mr. Descoteaux did not hear the case previously, he cannot vote on this tonight.

(Inspector) states that if a motion is made a reference should be made to a specific drawing.

MOTION: Mr. DePetrillo made a motion to approve the variance due to the shape and size of the lot, based on the plans dated May 10, 2019. Ms. Tremblay seconds the motion.

VOTES: Ms. Pawlisheck and Mr. Henderson vote in favor of the motion. Ms. Tremblay opposed the motion. (Chair) states the variance is denied. All members express their vote individually and verbally. (3-1) Motion denied.

2. New Public Hearings

Case No. 19-08 Petition for Relief- Finding (by Special Permit) to allow for the extension or alteration of a pre-existing, non-conforming structure (deck).

Address: 5 10th Street, West

Map 35, Lot 155

Applicant(s): David E. George

Applicants (David and Nicole George) approach the podium to explain they are asking to replace an existing non-conforming deck with another existing non-conforming deck. (Mr. George) states they have worked with Conservation also and have all approvals.

(Chair) confirms that the proposed deck is more conforming than the one there now. (Mr. George) states they are both non-conforming, but it will be further away from the neighbor's property than the existing deck.

(Mr. Descoteaux) asks how is it more conforming if it is larger? (Chair) states the applicant is making it slightly smaller; but it is still non-conforming. (Chair) explains that this is a finding. The Board is looking to see if it is more detrimental; if what they are doing is worse for the neighborhood etc.

(Chair) inquires if any abutters? None.

MOTION: Mr. Henderson made a motion to approve the finding as it is not more detrimental to the neighborhood. Mr. DePetrillo 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. (5-0) Motion approved. Unanimous.

Case No. 19-09 Petition for Relief- Variance regarding dimensional relief for outside stairs.

Address: 98 Elm Street

Map 17, Lot 1

Applicant(s): Wayne Capolupo

(Attorney) Claire Burhoe, representing the applicant, approaches the podium. She explains this property is the headquarters for SPS New England. The applicant wants to expand the office space into the third floor attic. To meet the code, a secondary means of egress has to be provided to exit the building.

(Attorney) explains the outline and the current stair location; on the west side of the building near the auto body shop. The stairs are currently there because it is most practical and is the furthest distance from the current stairs. **(Attorney)** explains that when a building permit was applied for, the Building Inspector was not sure if this stairway with the landing would meet the exemption with the side setback, given the size of the structure. The applicant was told to request a determination from the Board to see if a variance is required.

(Attorney) presents the plan on screen; showing the current building and where the stairway would go. She states it is not visible from the street or Chris' Auto Body Shop. The owners of the shop did submit a letter that supports the project. She shows a rendering on screen of what the stairs would look like and states it would be on West side of the building – away from the street.

(Chair) asks the representative to talk about the hardship and why a variance.

(Attorney) responds that the hardship is the size of the lot and the configuration. It is impossible to avoid being in the setback as it is the narrowest part of the lot. Also, the way the building itself is situated, there is no other place else to put the stairs. If the stairs cannot be put where indicated, then the office expansion cannot happen.

(Mr. DePetrillo) asks the **(Inspector)** if this is a variance. **(Inspector)** responds this is a variance because under the town's zoning, there are some architectural features that are exempt from setbacks such as Bay windows, roof overhangs and egress stairs with a 5x5 landing. **(Inspector)** states he determined that there is a much larger landing than the 5x5 involved in this. It would be a variance to the structure by adding on.

(Mr. DePetrillo) asks if there is another way to do it without putting a landing and just the stairs, so hypothetically they would not need a variance.

(Inspector) states that under the building code there has to be a landing and not one lengthy set of stairs.

(Attorney) states the applicant wants to make it safe, substantially built out of non-combustible materials and has a cover to be protected from inclement weather. It will not impact on the next door property, and no one will see it.

(Mr. Henderson) asks what the setback is; (Attorney) responds it is 20 feet; therefore it is within the setback.

(Ms. Tremblay) asks if this is the only location that the stairs can go?

(Attorney) responds yes as they are coming off a dormer in the back. It is the way the building is constructed. (Attorney) states these stairs are for emergency only.

(Chair) asks if any abutters. None present.

(Mr. DePetrillo) reads a letter from 100 Elm Street/Ralph DeLuca that was included in packages that supports the applicant.

(Inspector) states the applicant did not provide a dimension for the setback that they are proposing,

(Mr. Henderson) states it is 9.9 per the plan on the screen. (Inspector) indicates the Board has to go by the paper.

(Chair) states the hard copy we have does not have the 9.9 on it. (Attorney) states she can amend the petition, if that is acceptable.

(Inspector) states if a variance is granted; the Board can put a certain dimension even though it's not on the legal document provided.

MOTION: Mr. Henderson made a motion to grant the variance for emergency stairs to be 9 foot nine inches from the property line due to the shape of the lot. . Mr. DePetrillo 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. (5-0) Motion approved. Unanimous.

Case No. 19-10 Petition for Relief- Variance regarding an extension of a second floor addition.

Address: 29 Elmwood Street

Map 13, Lot 123

Applicant(s): Christopher P. & Rachel R. Sayer

(Mr. Ron Laffely) who is representing the applicant approaches the podium. He explains that back in 2002, a variance was granted for an addition on the garage, the applicants were issued a building permit and it was then constructed. Unfortunately, the variance was never recorded at the Salem Registry of Deeds. (Mr. Laffely) explains that when he was consulted to put a second story on the garage, he checked the Registry of Deeds and the files at Town Hall. He then asked the Building Inspector's advice

since it had been over 7 years. The applicants want to put a second story master bedroom over a portion of the garage that has a variance. (Mr. Laffely) refers to the plans and explains that all the setbacks have met the requirements except the left side. He presents a site sketch gathered from town files. The variance was for 8 feet. A closet and master bedroom will be added over the existing footprint of the garage. The setback line is where the closet is; the applicant is requesting a Variance to extend the second floor up.

(Chair) explains that in 2002, when the variance was applied for, the structure was built and never filed. Therefore, the applicant cannot just extend what you have. The Board would have to grant a variance. (Inspector) confirms it would still be a variance, not a finding. You are granting a new variance; cleaning it up. (Inspector) explains that under State Chapter 40A, zoning structures have a statute of limitations protected after 10 years.

(Mr. DePetrillo) inquires as to what is the hardship? (Mr. Laffely) states there is no other place to put the garage. The hardship would be the house would not be as usable; bedrooms too small now with (2) children and (2) adults. The applicants have looked at other places. There is only one tiny bathroom.

(Chair) asks if any abutters. None present.

(Ms. Tremblay) asks for more information regarding variance. (Chair) responds that it is an extension on a variance that they did not file. We are making legal the first variance.

(Inspector) states this is a dimensional variance, not a use variance.

(Mr. Laffely) explains the new area is within the roof line. Most of area being built is in the attic space.

MOTION: Mr. DePetrillo made a motion to approve the petition for a variance at 29 Elmwood Street due to the shape of the lot. Mr. Henderson 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. (5-0) Motion approved. Unanimous.

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

After (Chair) reads Legal Ad, (Inspector) states this is a Finding by Special Permit; not just a Special Permit.

(Attorney Mark Griffin) approaches podium and will be representing the applicant. (Attorney) explains the existing conditions on the presented plans. The current structure is in the R3 Zoning District and is a

(3) family structure. It is a pre-existing legally non-conforming use in an R3 zone which does not allow multi-family use. The structure was built in or about 1900; it pre-existed zoning in Salisbury. The structure has no frontage; it is closer to the beach than the street. It is accessed by the right of way by 185 Atlantic Ave.

(Attorney Griffin) continues that per the presented plans, his applicant would demolish the existing building and reconstruct a (3) family structure with the same use and reduce the existing structural nonconformities. The non-conforming setbacks will be brought into conformity. The height will be increased but remain under the 35 foot height restrictions. It will be put on pilings to get out of flood hazard elevation.

(Attorney Griffin) states this is a reconstruction by a finding. In this instance, the standard is that the proposal not be any more detrimental to the neighborhood than the existing structure. The existing structure is in poor condition and the proposed structure will be more aesthetically pleasing; premium materials will be used. The applicant will bring the setbacks into conformity and reduce lot coverage. The building footprint will be decreased and the height increased. **(Attorney Griffin)** states it is not more detrimental to the neighborhood. The use will remain the same and the bedrooms are decreasing. He asks the Board to grant the petition for a finding.

Any abutters? Yes.

(Attorney Andrew Caffrey), 1 Elm Street, Andover, MA approaches the podium. He represents Michael Kobos, 195 Atlantic Ave. **(Attorney Caffrey)** refers to a letter which Board members confirm they have in their package. **(Attorney Caffrey)** states that Attorney Griffin misstates what the Zoning bylaw says. **(Attorney Caffrey)** states that it does not allow for reconstruction; only extension and alteration in a finding, which is a critical difference. Reconstruction is not allowed. Also, the bylaw has adopted Chapter 40-A and he reads aloud 40-A-6; a limit of a single or 2 family structure. There is no right to reconstruct a 3 family structure in this zone. The attempt of the bylaw is to reduce non-conformities. If this current structure is obsolete, it is not in the general welfare to reconstruct a 3 family structure. Also, density is a real problem in this neighborhood as is parking is. This building has no parking. The applicant is proposing 3 new housing units. **(Attorney Caffrey)** states that neighbors would feel differently if there would be year round rentals and not people constantly in and out. **(Attorney Caffrey)** states the project is not in the best interest of the neighborhood or the town. His understanding of the reading of the law says it is not allowed.

(Mr. Dana) inquires if there is a way for it to be conforming on the lot. **(Chair)** discusses the dimensions of the lot and confirms it will never be conforming.

(Attorney Griffin) approaches the podium and addresses Attorney Caffrey's remarks. Attorney Griffin states that he disagrees that reconstruction is not allowed under the Salisbury Zoning Bylaw. He finds nothing in the zoning bylaw that says you cannot reconstruct. He also admits that 40-A-6 does allow reconstruction. He states that 40-A-6 is an enhanced protection for the non-conforming nature of 1 and 2 family uses and structures. Attorney Griffin states it is a 2 step test which he explains and then hands out materials to the Board concerning how reconstruction is allowed and one and two family dwellings.

(Attorney Griffin) refers to page 6-21; 40A Section 6; reconstruction is allowed; he then quotes the footnote on that page. He then refers to page 625.

(Attorney Caffrey) returns to the podium and refers to Section 300-21B of the bylaw. He quotes that under a finding, pre-existing and non-conforming uses may be extended or altered. It does not say reconstruction. Reconstruction is not allowed under a finding. He refers to Page 6-25, above what Attorney Griffin underlined, stating this language is limited to 1 and 2 family structures, not 3 family structures. Attorney Caffrey states again a finding is limited to 1&2 family structures.

(Chair) asks for a rendering of the proposed house. (Attorney Griffin) states there is currently not one to present.

(Mr. DePetrillo) asks for the Building Inspector's input.

(Inspector) states the Board should get town counsel opinion. There was no time to discuss Attorney Caffrey's letter because of timing. (Inspector) continues that it is critical to separate use from structure. They are (2) separate elements under Chapter 48. He states that looking strictly at the structure, it is bigger, taller, moved over etc.; that is a finding to reconstruct that.

(Inspector) reads the first paragraph on Page 321 concerning use which concerns the full language of the law. There is a case from about 5 years ago called Welch- Phippino vs. the City of Newburyport. There was a separation of use and a determination was made that one does not necessarily affect the other and a finding or consideration for relief was not needed unless the use was substantially different. (Inspector) again suggests that town counsel takes a look at this and how it refers to the current case. (Inspector) states the use has not substantially changed and refers to Section 322. (Inspector) states his opinion is that the only thing that applies here is a finding, not a special permit. It is a finding by special permit. The only thing that applies is the structural element. The use is not substantially changed from a 3 family to another 3 family. He does not believe any relief is necessary to continue the use.

Abutter comments:

Abutter Sandy O'Connor, 195 Atlantic Ave. approaches the podium and states her concerns are the parking. She thought 2 spaces allowed per unit. Ms. O'Connor's other concern is that the applicant says it will affect the welfare of the neighborhood. She feels it already has. The owners are currently renting out to underage groups of young people. They are college age kids and much drinking taking place. There is a buildup of trash and no one comes to clean it up. The impact to the neighborhood has been negative so far.

(Chair) states that historically, when a structure is not in good condition, it is not held in high regard. Maybe a new structure would bring better/higher regard to the neighborhood. Mr. Andre Dubois, part owner of 187 Atlantic Ave., approaches the podium and states he cannot get money from renters because of the current condition of the house. He is only attracting people who want to rent cheap. Mr. Dubois explains he wants to rent to older people who want to rent the rest of their lives. Concerning the neighborhood, he wants to be a small part of the revitalization of the neighborhood. The existing structure he cannot do much with as it is so rundown. Mr. Dubois states he has just

purchased 185 Atlantic Ave., the house behind 187 Atlantic. It has a sizable yard which he hopes will help with parking and hopefully that will help that situation. **Mr. Dubois** states they are trying to keep on top of the trash. He explains they are looking forward to building a structure that will bring it up to the next level.

Abutter Martha Walsh, 161-171 Atlantic Ave- inquires if they have a regular trash pick-up because she has not seen any company pick it up on a weekly basis. The applicant responds that they do.

Abutter Sandy O'Connor approaches the podium and states that she and neighbors appreciate that you want be part of the revitalization but a (3) family structure with no parking is not what the neighborhood would support. The current summer is a parking nightmare. Ms. O'Connor states there are only (2) parking spaces at 185 Atlantic; for that house.

(Chair) states that 185 Atlantic Ave. is not under the Board's consideration. She then asks Attorney Griffin to address the parking situation.

(Attorney Griffin) states the parking is legally pre-existing non-conforming at this point. **(Chair)** states that since you are putting it up on pilings this may be an opportunity to do something with the parking.

(Inspector) states it is a tight area and can't get to it.

(Attorney Griffin) states the only way to provide additional parking would be to configure it with the new property they are purchasing. There has been no discussion yet. The applicant had not closed on this property when this case was filed. The application indicates we would maintain the non-conformity.

(Inspector) clarified that this project got kicked off by the March storms. This foundation cannot be repaired and there are many other properties in the same situation so this will come back again. Some properties cannot physically provide parking. It is somewhat pre-existing and we'll have to make it work.

(Mr. Descoteaux) states that the existing structure is a (3) family and the new proposed is (3) family. What impact would that have on parking that doesn't exist already as the current renters, college kids, may currently be bringing in more cars than older renters. Parking is a problem everywhere.

(Mr. Dana) states that if this is new construction, the parking problem can be alleviated with the new property the applicant is buying. **(Chair)** reminds the Board that this property is not in our purview. Even if the other property is bought, it is separate from this case, unless the land is incorporated into this property.

(Chair) asks for a motion to continue so that Town Counsel can review the comments from Caffrey and Caffrey. **(Ms. Tremblay)** begins to make a motion that we continue....

(Inspector) states that when a motion is made, to please make that motion to continue very clear that we are moving out the dates for approval; we do not want to create an automatic approval because we have run out of time. The Attorney should provide us with something requesting a continuance and acknowledging that we are stretching out the time period for automatic approval from 100 days to

whatever is appropriate. Attorney (from audience) asks for form; Inspector asks him to put something in writing.

MOTION: Ms. Tremblay made a motion to continue this case so the town attorney can review the correspondence from Caffrey and Caffrey. Mr. DePetrillo seconds the motion.

VOTES: Ms. Pawlisheck, Mr. Henderson and Mr. Descoteaux vote in favor of the motion. All members express their vote individually and verbally. (5-0). Motion passes. Case continued to June 11, 2019.

A. Minutes

April 23, 2019 meeting minutes needed to be approved and then signed by the (Chair).

Ms. Tremblay makes a motion to accept the minutes; Mr. Henderson 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

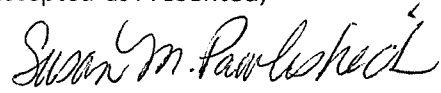
- The Board reserves the right to consider items on the agenda out of order. Not all items listed may in fact be discussed and other items not listed may also be brought up for discussion to the extent permitted by law.

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

Next Scheduled Public Hearing: June 11, 2019

Respectfully submitted by Teresa Mahoney, Board Secretary and accepted at the
July 23, 2019, meeting of the Zoning Board of Appeals.

Accepted as Presented;

A handwritten signature in black ink, reading "Susan M. Pawlisheck". The signature is written in a cursive style with a large, stylized 'S' and 'P'.

Chairperson Susan Pawlisheck

Cc: Town Clerk