



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

MEETING MINUTES- PUBLIC HEARING

Hearing Date: August 13, 2019 @ 7:00 pm

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

Member (s) Absent: Kevin Henderson

Additional Persons Present: Scott Vandewalle, Building (**Inspector**)/Zoning Officer, Attorney Jeffrey Blake, KP Law

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

Executive session under G.L. c.30A, §21(a)(3) to discuss strategy with respect to litigation regarding Clear Channel et al. v. Susan Pawlisheck, et al. (Salisbury Zoning Board of Appeals), Appeals Court No. 2017-P-1609. Votes may be taken. Board to return to open session.

(Chair) announces she is opening this hearing under the above and the Board is going into Executive Session. (Chair) did not ask for roll call to go into Executive Session. Mr. DePetrillo makes a motion to go into Executive Session. Ms. Tremblay seconds the motion. Roll call is taken, all Board Members and alternates present (6) vote verbally to go into Executive Session and leave the podium.

The Board returns.

(Chair) announces that applicant for Case 19-11, 187 Atlantic Ave. requested to go last thus case moved to second presentation and change in the agenda.

Case No. 14-13 Petition for Finding/Special Permit (pursuant to Town of Salisbury General Bylaw, Section 214) to allow for the installation of a new 14X48 (2) sided digital billboard. Overall height not to exceed 55'

Address: 74 Main Street Map 12, Lot 50

Applicant(s): Clear Channel Outdoor Inc., 89 Maple Street, Stoneham, MA

Remand from the Appeals Court in the case of Clear Channel et al. vs. Susan Pawlisheck, et al. (Zoning Board of Appeals), Appeals Court No. 2017-P-1609 (An appeal pursuant to General Bylaw Chapter 214-12)

(Chair) opens the case. **(Attorney)** Jason Scopa approaches the podium and states he represents both Clear Channel Outdoor and David Pritchard. He then presents a diagram of the property. **(Chair)** states aloud who will be voting this evening; that being: Linda Tremblay, Susan Pawlisheck, Derek DePetrillo, Paul Descoteaux, Drew Dana. This is a Super Majority vote as it was before. **(Attorney)** states a Super Majority would be under Section 300, and we are under Section 214. We are part of the general bylaw, not the zoning. **(Chair)** states her understanding is that it should be a Super Majority per Town Counsel and the Board will use the same criteria as the last time.

(Attorney) backtracks and goes through the procedural history. **(Attorney)** states that over five years ago the board voted to deny the Clear Channel's application for a billboard at this site; to erect a (2) sided billboard not to exceed 55 feet in height. He states that after a lengthy, costly litigation, the Massachusetts Appeals Court ruled that they were wrongly denied the Special Permit and once the ruling was made, the ruling was submitted to the Board along with the original application per Town Counsel's instructions. The case was put on the agenda for July 23rd and Attorney Flynn was here and was informed that the Town had not perfected the Public Notice and so it was moved to this date. **(Attorney)** states he now understands the Town perfected the Public Notice.

(Attorney) discusses where the case is procedurally. He explains in the spring of 2014 Mr. Pritchard and Clear Channel came before the Board seeking the approval of a (2) sided digital billboard. There was similar relief being sought from a competing billboard company less than 1,000 feet away. That petition was approved and Clear Channel's was denied. **(Attorney)** then initiated litigation in the Essex County Superior Court, which did not reverse the findings of the Board. **(Attorney)** states they then appealed that decision in December 2018 and the Massachusetts Appeal Court reversed the Superior Court and annulled both decisions from 2014. **(Attorney)** states the Court said the decision to approve the North Vision permit was annulled and voided and also the decision denying the permit for Clear Channel was denied. The Appeals Court order concludes with an instruction that the Board is to reconsider within the parameters of the law and reconsider the application and do it in a manner that does not defeat the (2) step system that is the law of Massachusetts.

(Attorney) states that this law is if you want a billboard like this you get permitted at the local level and if successful, you would go the Office of Outdoor Advertising and get step #2

approved. **(Attorney)** states he has received the decision and has sent it in and it was also sent to the Town and hopefully circulated and reviewed. General discussion takes place, at length, about this (2) step process. The Court ruled that (2) members of the Board that sat and heard this application in 2014 defeated this (2) step process by basing their votes against the Clear Channel on opinions that they held and things having nothing to do with zoning or the bylaw. That ruling was made based on a number of things but mostly notably for emotion for entry of judgment that Town Counsel filed admitting that Clear Channel was wrongfully denied their permit as Kevin Henderson and Edwin Hunt had based their votes on things they are not supposed to. The Appeal Court had comments on that and the **(Attorney)** reads it out loud. **(Attorney)** also states the Court also annuls the decision and asks the Board to consider it without defeating the process. **(Attorney)** states this brings us to today, the present.

(Attorney) continues to discuss the decision. He states that all the parties to the litigation that started in 2014 and ended in December, stipulated that somewhere along the way that both of the applications submitted, including the one re-submitted to you today, met all the criteria necessary to get the Special Permit to erect the billboards. The Special Permits should have been allowed. He states that Chapter 214 of the Town's bylaws, concerning signs, has been complied with; the Town has agreed to this in the past both in dispositions and in the context of the litigation. It is part of the Appeals Court order; hardship has been established, the Board was convinced and on record that there would be no negative effect on the community.

(Attorney) states that his client's position is that we are past that; the hardship has been established. The Appeals Court made it clear to the Board, not the applicant, that to do any further proceedings that you have to do to effectuate that you give Clear Channel their permit. It should be a rubber stamp at this point. He states there is no North Vision application competing within 1,000 feet away. We feel the permit has to be granted, the application has got to be treated as if it were June 2014. If things have changed or been amended, you can't change anything during litigation; the applicant is grandfathered in that respect. The SJC refused North Vision's request to take a look at what the appeals court did; they said no, the case is over after 5 years of costly litigation. **(Attorney)** states that with the permit his client can go to the Office of Outdoor Advertising and get state approval. If the applicant runs into problems there, that is not before the Board. The town handles only decisions within their purview only. Leave state decisions up to the state.

(Attorney) then offers to present to the Board a review of site conditions and the hardship again.

(Chair) requests that Attorney stops using the term 'rubber stamp' as there are new folks here hearing this information for the first time, although they are informed. Please don't make assumptions. **(Chair)** states the applicant is here to help us to understand the request and see

how it fits with the bylaws of our town and then determine if we will approve or deny it. It is not a rubber stamp, it is a process.

(Mr. Descoteaux) inquires as to what the criteria are and the client's compliance with it?

(Attorney) responds that the Appeals Court went through the criteria themselves and he continues to read Section 214 which the appeals board had quoted.

(Mr. Descoteaux) inquires about the negative effect on the surrounding properties. He states he thought there was a detrimental effect on the surrounding properties.

(Mr. Dana) asks for an explanation as to how it is NOT going to have a detrimental effect on the surrounding properties.

(Attorney) responds that 74 Main Street is owned by Mr. Pritchard's trust. The lot is just under 7.5 acres, and it abuts Route 95 on the west and Main Street on the south and east and there are a couple of privately owned properties to the north. There is no access to 95; all the access is through Main Street. **(Attorney)** shows a drawing of the location of the sign on Route 95. He states it is confined to that spot for a number of reasons such as the existing improvements, heavy trees to the south that extend for 200 feet; the proposed sign location is favorable so we would not disturb the trees. There are trees to the north and that would interfere with southbound traffic; all these add up to the hardship on where the sign can go.

(Attorney) again talks about Section 214. He states there is no negative effect on the community: the scale is consistent with industry standard. It is well lit, attractive to advertisers, the height is no more than 55 feet, and it is technologically current. It will not interfere with the residential properties.

(Mr. Descoteaux) inquires if any studies have been done and how he knows it won't interfere. He asks **(Attorney)** to elaborate on this.

(Attorney) responds that this is what Clear Channel does; it is on a commercial lot, as close to the highway as it can be, the height is lower than 2 other signs that were approved by the Board. It offers benefits to the town and there is no increase in traffic. It is not contrary to any of the by-laws in Salisbury. We ask that you grant it.

(Mr. DePetrillo) asks **(Attorney)** if he could go through the 5 step process. **(Attorney)** discusses the (5) steps and responds that where it is situated it does not run afoul of your bylaw.

(Ms. Tremblay) inquires if Clear Channel does any type of studies? Such as how do you decide if something is too bright? **(Attorney)** responds that there are industry standards on brightness

and lettering. **(Ms. Tremblay)** states the structure is an issue but the brightness in the neighborhood is a concern.

(Attorney) states the location of the sign is closest to the highway; it will face Route 95 and is far from the neighborhood.

(Chair) inquires if any abutters are present.

(Attorney) requests if Mr. Pritchard can speak first.

Mr. David Pritchard, approaches the podium and explains that he owns 65, 67, 70, 72 and 74 Main Street and has been around town along time and gives some background on the land back to 1959. Mr. Pritchard states that the Town has come a long way and things have changed. He states that with all due respect, the Clear Channel sign will be on Route 95, many people can't even see it; and also Clear Channel gives 5 hours of free advertising for the town. There are some negatives but there are some positives. The sign is not in a neighborhood or on a beach road, etc. The only people seeing it are those on Route 95. Mr. Pritchard also mentions a sign at Exit #60 mentioning Salisbury MA.

Abutters:

Mr. Ken Whittaker, 3 Congress Street. States he has been there close to 40 years and is not a physical abutter but a visual abutter. He states the Board owes the Town of Salisbury an apology; when the board voted yes in the past, there were not even 3 people at the meeting. He states this should not be approved.

Mr. Jack Sanborn, Locust Street. He refers to the effects on the community and he states the lawyer never mentioned the west, where the lights would point at. He states the billboard is going on the east side of the highway and each sign is 720 square feet of light; it is going to be shining west onto Salisbury Plains. Mr. Sanborn states there are houses parallel to the highway, so the lights will be right on their yards 24 hours a day. This will hurt people and will affect the value of their property. Who will want property with the light in their yards.

Mr. Paul Turner, Ex- Chairman of Historic Commission in Salisbury. His concern is the aesthetics the historical property out there. There are least 5 houses over 200 years old. And the farm itself is over 250. It is rural, beautiful farmland. It is unconscionable to put it there.

Mr. Gene Willis, 7 Folly Mill Road. Mr. Willis states he feels that the Board is within their right to tell the applicant this whole thing is moot; it was annulled in December and billboards not allowed now.

(Chair) states it is her understanding that the new bylaw has not been approved yet; it is not a law yet.

Donna Bartlett, Main Street. Refers to the billboard going up at 109 Rabbit Road. When the applicants went before the Board Derek said let the state decide. She states: Please do not let that happen again.

Steve Stanganelli, Amesbury Councilor at Large, states this will impact the residents of District 1 in Amesbury. He believes that there are safety concerns, it is distracting, and he encourages the Board to listen to the abutters and stop this project.

Frank DiLuna, Smolak and Vaughan, represents the Bartlett family. **(Attorney DiLuna)** states there is a lot going on that this Board, as fact finders, need to consider and also go through the evidence. **(Attorney DiLuna)** discusses the Murray Rule explaining that (4) members were not part of the Board; they have to hear the entire hearing and have an opportunity to weigh the evidence. He states that hardship has to go to the owner of the land, not the applicant. He asks if this a self-imposed hardship and to consider if there is a hardship.

(Attorney DiLuna) discusses if any studies were done on this project to show that this is an appropriate setback. These studies have never been presented to the Board. There are many issues to consider. The bylaw says the sign has to be no more than 20 feet high; this sign will be at maximum 55 feet high. Does the applicant need a variance.

(Attorney DiLuna) presents many questions such as: is the height and size excessive, can the sign be shut off at night? Mr. Sanborn's property will be impacted and will be flashed on by this light constantly. Are there any reports from realtors or studies that it will not affect abutting properties? The Board itself is for commercial advertising; not for Salisbury. Is it necessary? The town's bylaws require the hardship go to the owner, not the applicant. This Board needs to review this evidence and make sure you have the evidence to approve a special permit.

Shannon Lucia, 3 Natowich Way, states she agrees with the attorney and does not think anyone on the Board has looked at the studies. No one has talked about the flickering lights, luminosity. What is the impact to the residents from this light. She would like to see evidence that her life and property value will not be impacted by this.

Don Manson, 131 Beach Road, speaks about how people will look at the sign and be distracted.

(Chair) explains that the Board looks at the rules and bylaws of the Town of Salisbury and there is another statewide organization that takes those things into account. This Board is only looking at the (5) criteria presented by the attorney.

Donna Bartlett, Salisbury Plains, states that in 2019, 2014, 2016...there were bylaws about signs and electric message boards. There was a huge outrage concerning the Rabbit Road billboard. It then went to town meeting and was voted down unanimously. People do not want this in town.

(Attorney Scopa) approaches the podium and states the closest house is not 300 feet away, it is nearly 900 feet; like 3 football fields. **(Attorney)** references the appeal court decision. It states it has been stipulated that Clear Channel's application meets the criteria for a Special Permit under Salisbury's bylaws.

(Mr. DePetrillo) inquires what the parameters were that were used for no effect on surrounding property values.

Mr. Morello, Clear Channel, states the company goes into neighborhoods; they want to be sensitive. The sign will not shine into yards, but it shines on the highway. The signs don't flicker or flash.

(Mr. DePetrillo) asks if this is how the court reached its' decision, specifically on the property values?

(Attorney Scopa) responds that it would include the testimony under oath of Mr. Henderson and Mr. Hunt, even though they voted against it, they found no negative effect on the surrounding community. There were multiple stipulations that both North Vision and Clear Channel applications met every criteria; the only reason Clear Channel did not get it is because Hunt and Henderson said they did not want it to get to the state.

Jane Purinton, 20 Toll Road, states that presuming the (5) bylaws have been met, doesn't this Board have the authority to vote no on this project.

(Chair) answers no, that the board must follow the law. We would only deny it if one of the 5 things is not complied with. There are 5 criteria we use to determine to grant a Special Permit and we look at each one and make sure they meet those criteria. If they meet all 5, can we deny? The answer is no.

Margaret James, 40 Locust Street, states she is not sure how all this began as she was never notified that permission was given for this whole process to start. She feels something was amiss in town government. It did not have the blessing of the residents. It is about safety and our quality of life. I want my concerns and questions to be heard.

(Mr. DePetrillo) makes a motion to close the public hearing for deliberations. **(Mr. Descoteaux)** seconds the motion. The vote is unanimous by all members.

(Mr. Dana) requests more information on the whole project as he was not involved in the beginning; wants to see more than just the attorney presentation. **(Mr. Descoteaux)** would like town counsel to advise considering the hardship. does it go to the applicant or property owner?

(Attorney Blake, KP Law) states it would be up to the Board to interpret the bylaw. He continues that there were prior interpretations as it is not the first time you have interpreted this section; the Board has granted at least 2 permits under this section for a billboard and in the case at the Appeal Court, at least (2) members indicated that they believed they complied with this section. It appears that you have taken the position that it would be the applicant's hardship. You have made a judicial admission that it meets that hardship prong in an earlier court case. The application is exactly the same one and there have not been any changes in circumstances since then.

(Mr. Descoteaux) states that concerning property values, as a lender in a full-time position, no transactions were made without the views of a professional appraiser. **(Mr. DePetrillo)** inquires as to where the Board stands on the right to have someone do an independent study on the light effect and property values. He asks if someone come in and do this and give an independent review. **(Ms. Tremblay)** and **(Mr. Schillizzi)** also concur that more information is needed on the impact to property values.

(Chair) states there is a large outcry from the community telling the Board there is an impact. The Board cannot be blind to that. The Board's job is compliance with the bylaws and those bylaws are meant to protect the people and honor the intent of the community. The Board has to do their due diligence and make sure that the impact is either there or not there. If there is a negative or detrimental impact to the neighborhood, we have to gather information about that and determine the best way. **(Chair)** addresses Attorney Scopa and requests if Clear Channel can, in some way, produce some information or have some type of study done that shows there is no detrimental impact and also the Bartlett's have hired an attorney that may be looking for a negative impact. The Board has the right to see some substantial evidence in either case. **(Attorney Scopa)** seeks more information on what the Board wants and how much time is given to provide it. **(Chair)** states that she is making an assumption that Clear Channel routinely does an impact study for the neighborhood. You could have some type of evidence showing no impact. People here in the audience would like to see something that shows no impact on their property. **(Attorney Scopa)** replies that what is being requested would be a study as to what houses in a particular neighborhood were worth before the sign went in and then the value after? **(Chair)** states that would be part of it, but the subject of light came up also. **(Chair)** states the other gentlemen (Mr. Morello) had mentioned that because of the shape of the sign there is no impact or illumination on properties. Is there evidence of this. **(Mr. Morello)** states he can provide a light study which Clear Channel does all over the country. Clear Channel has never been asked about home values and their relationship to a new billboard. He can do his research but have never been asked before. **(Chair)** reads the bylaw: the granting of the special permit will not have a negative effect on surrounding property values. **(Mr. Morello)** states Clear Channel has never been asked to do this before; they do light studies. **(Chair)** states she realizes they have not been asked that, but per the bylaw being

very specific, please give the Board evidence that property values will not be impacted by the sign. **(Attorney Scopa)** inquires if the previously approved location at Rabbit Road were asked to provide the same information? **(Chair)** responds that she does not know and would have to look it up. **(Mr. Descoteaux)** states he is assuming this a bylaw Clear Channel has not dealt with in the past so do not have this information readily available.

(Chair) states the Board is offering a continuance for Clear Channel to get some information back to us. Would you like to do that? **(Attorney)** confers with Clear Channel. **(Attorney)** confirms that yes; they will take the continuance and will be happy to provide what they think the Board is looking for.

(Chair) states the continuance date would be September 10th and requests the applicant to complete the continuance form. The form is then completed.

(Mr. DePetrillo) makes a motion to continue Case 14-13 to the September 10, 2019 meeting. **(Mr. Descoteaux)** seconds the motion.

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

(Chair) notifies the audience that the Case will not be re-advertised.

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

Matt Steinel, Millennium Engineering approaches podium and explains that new plans were dropped off for the Board packages; **(Chair)** asks if the abutters have seen them and Mr. Steinel explains that is up to the abutters; the plans were available in both the Building, Conservation and Planning Departments along with the whole file; he does not know if anyone had gone in to see them.

(Mr. Steinel) continues to talk about the new plan which is the same as the first plan except for the number of units in the building and how it affected parking. In buying the front building, the applicant looked at putting some parking on that lot and maybe lifting the building for parking under. The applicant did go to the Conservation Commission with that idea but it goes against what the Conservation wants; they want no parking under the structure and they would

not want parking near the frontal dune. The next solution for the owners was to reduce the number of units. Although there is an existing (3) unit structure there, the applicants will reduce it to (2). The original plan had a total of (6) bedrooms, but now one has a (4) bedroom and one has (2) bedrooms.

(Mr. Dana) confirms they went from (3) units to (2) units but the total bedroom count stays the same. There is a parking requirement but it's per unit.

(Mr. Descouteaux) inquires if there is any alternative parking at all? **(Mr. Steinel)** confirms there is none on this site. It is landlocked. The only way to address parking is reduce the number of units. **(Mr. Descouteaux)** asks where new structure is going as compared to the current structure. **(Mr. Steinel)** shows the existing and proposed plans and explains that the new structure is being brought to the center. It is 10.2 non-compliant; being more compliant on the front setback and fully compliant on the 2 side setbacks. The rear setback on ocean side remains in compliance. It is not fully compliant but more compliant than currently. To clarify, our original proposal to Conservation was fully compliant but it was too close to the ocean so we were asked to balance the Zoning ordinance and the wetlands; to split the difference. .

(Mr. Descouteaux) asks what the impact is to the abutters. **(Mr. Steinel)** responds that it is more compliant; the building is being moved further from their structure, reducing the number of units, so there should be less need for additional vehicles and that should help with parking congestion on the road; there should be no impact to them. There is an existing structure with occupants there; the applicant will demo building and put in something new with less units. It is more compliant concerning flooding so therefore wave damage is less likely. Collateral damage will be minimal using wave borne material; it will be up in the air.

(Ms. Tremblay) asks what happened to the building in the front and if the shed will be removed. **(Mr. Steinel)** responds that it is their access point. The structure will remain in place. And the shed will be removed only if they need access on that side. Mr. Steinel explains shed/chain link fence on the plans.

Abutters:

Chuck Takesian, 9 16th Street. He has property at 173 Atlantic Ave. He explains that he has lived in town for 40 years, explains his background and how he follows property and the decisions of various boards. **(Mr. Takesian)** states the Zoning Board has never granted permission for a multiunit without adequate parking. He explains the units he has built and has always had to have 2 spaces per unit. He offers unsolicited advice such as the applicant could build (5) units on the ocean; maybe 4. That would give you the parking. He is not opposed to a new building, parking is the issue. He addresses the Zoning Board again saying the parking is history, having the 2 spaces per unit.

(Ms. Tremblay) comments she drove by the property today and the parking being discussed across the street from the property was all filled.

(Mr. Steinel) states he disagrees with Mr. Takesian as he has gotten findings that are land locked like this property that have no parking. This is not precedent setting issue, it has been done. This is not the construction of a new building on a new lot; it is replacing an existing structure. The applicants and the Board each have legal opinions from their own counsel stating that it is within this Board's authority to grant approval for a (3) story structure to be replaced with a (3) unit. The applicants have opted to reduce the number of units to (2). It is not unusual for the Board to grant a finding, not a variance. That is what we asking approval for; what we are presenting is no worse to the neighborhood than what is there now; it not more detrimental to the neighborhood. It is pretty straight forward.

Robb Osinski, 183 Atlantic Ave. – Abutter who lives adjacent to this sight. **(Mr. Osinski)** has seen the plans and has walked the site so has a good idea of where structure will sit. He states it is still his opinion that a variance is required even if it is a (2) story. He states he is concerned about the parking. The Town does not allow street parking on that side of Atlantic Ave starting around October or November so there is no parking. He states the Board cannot let a building go up if there are not parking spots. There should be (2) spots per unit. He states he cannot support the project without the parking being resolved. Without parking, how can the board make a decision.

(Mr. Takesian) again approaches the podium to refute Mr. Steinel's statement. He states there is not much landlocked land at the beach. The applicants own from the street to the ocean and can have parking if they combine the properties. He gives examples of multi-unit structures being built that had a parking requirement. He has never seen it waived.

(Ms. Tremblay) inquires that if the applicants own (2) adjacent lots, as in this case, when does it become one lot? **(Inspector)** replies it becomes (1) lot for purposes of zoning if they are both undersized. If they try to create one lot in this case they would lose their protected rights; you would be creating a single family lot only. You can't put (4) units on a combined lot.

(Chair) inquires if the applicant went to Conservation to ask if you could go underneath. **(Mr. Steinel)** states there are no other options. It would require removing stairs on the side which would affect an egress, but they still cannot even get (4) spaces for 185 Atlantic so there are none for the rear building. He states this was pre-existing, prior to Zoning. It is non-conforming and the applicants not proposing to make it any worse. Conservation has made it clear that no one can drive out on frontal dune; it would result in more storm damage.

(Mr. Descouteaux) confirms that the new structure is year round and that the units will be for sale, not rentals.

(Mr. Steinel) states he does not understand the alternative for his client. The building in the front does not have adequate parking and there is no viable alternative for the new structure.

(Chair) proposes to regroup. She states the case currently before the Board is a finding. It is about whether or not the proposed structure is more detrimental to the neighborhood because it is a pre-existing non-conforming (3) unit structure that is being repurposed as a 2 unit. The Board must use the criteria for a finding for the decision we are making.

Mike Kobos, 195 Atlantic Ave. An abutter that lives (4) lots away from property. He states that parking is severe down there. **(Mr. Kobos)** states the fact that it is going from seasonal to year round makes it more detrimental to the neighborhood; not having parking on a year round structure is more detrimental. He states his attorney has been here at other meetings. He states that his position on a finding is someone is trying to take advantage of grandfathering. The thing that gives them grandfathering is a (1) or (2) family structure that was in existence before 1978, when zoning passed, can be torn down and rebuilt, but for a(3) or more family structure, it says you can only renovate/reconstruct; not tear down and build a new structure. Also, when the applicant spoke about the front yard setback it doesn't meet zoning. That is a brand new building, they are tearing something down and building a brand new building. It doesn't meet the setback, it needs a variance. **(Mr. Kobos)** questions how they can put up a brand new building in a different place on the lot and violate the setback and not need a variance.

(Mr. Dana) inquires if this property was damaged in a storm and had the Building Inspector said it could not be occupied.

(Inspector) replies he did not say it could not be occupied; the town did not condemn it. The owners would likely have to replace it triggered by FEMA regulations.

(Mr. Dana) inquires if in its' current space, can it be utilized.

(Inspector) states it currently is but this is the last summer he will allow it.

(Mr. Descouteaux) asks the Building Inspector if there is anything that would be allowed to be done to the property to get more life out of it.

(Inspector) will not answer that; the applicant just has to follow the regulations and he will say only that it has to come down. What comes after that is a different issue.

(Mr. Osinski) states that he fails to see why that is relevant. That determination was made when the prior owners possessed the property. The new owner should have been aware of this, so it is not a hardship matter.

(Chair) states that hardship is not relevant to a finding and inquires from **(Inspector)** the criteria for a finding. **(Inspector)** responds that there is no criteria for a finding beyond more substantially detrimental.

(Mr. DePetrillo) states that parking is a problem, especially from the abutters. He wishes there could be a compromise as the applicants are making it better, except for the parking.

(Mr. Steinel) states the applicants went to (2) units from (3) thinking everyone would be happier; not the case.

(Ms. Tremblay) asks why the front lot can't be torn down. **(Mr. Steinel)** responds it is not in disrepair, and that would be an expensive project. If there was a parking solution, the intent was there to try to solve the parking problem. The applicant is reducing the units to help the neighborhood. There is a budget. There will be a cut in profits with only 2 units rather than 3.

(Mr. Steinel) continues that there is no way to provide parking on the lot. We are not asking for a variance, only a finding. It is less detrimental than what is there.

(Mr. Dana) states there is a need for 8 parking spots; where do they go.

(Mr. Steinel) responds that it is the same as they do now. The intent is to stay the same or make it better.

(Mr. Takesian) approaches the podium and there is general conversation concerning putting the lots together, building (4) units, economics. He states to leave the lots the way they are and have parking on the front lot and put a building on back lot. People do not want to buy a building without parking. It would be worth more; the rents would be more, maybe 4 or 5 ocean front units.

(Mr. Osinski) again approaches the podium and states he still hasn't heard what the plan is for parking. **(Chair)** responds that it is exactly the same as it is today. **(Mr. Osinski)** asks what the plan is today. **(Chair)** responds that they don't have parking spots on the plan today and they will not in the future. **(Mr. Osinski)** discusses the 2 properties and where the currently parking is. He discusses the drawing and shows that cars going by the side of the house at 185 to get to the ocean house. If there is no adequate parking plan with the new plans, it is detrimental. There is parking on the sand currently. **(Chair)** states that Mr. Osinski is supporting the point; saying they are going to do the exact same thing and that nothing changes. **(Mr. Steinel)** states that parking on the sand will not continue. There is no current parking on site today and there will not be any tomorrow. It doesn't solve the problem. **(Mr. Steinel)** states that their position is that it is less detrimental.

(Inspector) inquires as to what is the final logic of the parking plan; they don't get any building if they can't provide parking? **(Chair)** states there is a happenstance here. The fact that they own the lot in front of them is not relevant to this property.

(Inspector) states that regardless of the front one, if they propose one without parking, and we follow the logic, could they get a variance.

(Ms. Tremblay) asks if the street lot would provide under the structure parking? **(Mr. Steinel)** responds that they are not required to raise that structure and it would be costly. They have no intention of raising it. It is a solid wall foundation.

(Inspector) states that putting (4) units on the ocean side lot would not be viable. That would be a use variance and that is not approved in town. The concept does not work.

(Mr. Descouteaux) states the economics of dismantling the front building would be of greater significance.

(Chair) states this is about this building, as proposed, is it more detrimental or not more detrimental to the neighborhood. That is the measure and criteria of a finding.

(Mr. DePetrillo) makes a motion to grant the Special Permit by Finding for 187 Atlantic Ave. as it is not more detrimental to the neighborhood. **(Ms. Tremblay)** seconds the motion.

VOTES: Ms. Pawlisheck, Mr. DePetrillo and Ms. Tremblay vote in favor of the motion. Mr. Descouteaux and Mr. Dana oppose the motion. **(Chair)** states that because it is a finding, we do not need a supermajority. **(Inspector)** states we do need a supermajority because we apply the Special Permit requirement. **(Chair)** confirms the motion fails 3-2. **(Chair)** states the applicant needed 4-1 decision under supermajority.

(Mr. Steinel) asks of the members who do not look at this favorably, what the applicant can do to get over that threshold. The applicant does not want to lose another unit. It is unrealistic.

(Inspector) clarifies that once a NO vote is taken, the applicant cannot come back with a substantially different proposal for (2) years.

(Mr. Steinel) states the applicants have an existing (3) unit structure that they can continue renting out and are now being told by the Building Department that after a year there is too much damage, but then Zoning is saying they can't replace it even though what we are replacing it with conforms with FEMA and would be less detrimental to the neighborhood.

(Inspector) informs them they have additional appealing rights, such as the courts. Also, the (20) day appeal period is for abutters.

A. Minutes

June 11, 2019 meeting minutes needed to be approved and then signed by the **(Chair)**.
Mr. DePetrillo makes a motion to accept the minutes; Mr. Descoteaux seconds.
Minutes approved by all Board Members.

B. Correspondence and Other Board Business

New Business: LD Russo to discuss the proposed freestanding sign to be added at 7 Park Street as part of the Residences at Salisbury Square apartments.

No representation from LD Russo; per **(Chair)** continue to the next meeting on August 27, 2019

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 Ms. Tremblay, Mr. Descoteaux seconds and approved by a 5-0 vote. Meeting is adjourned at 9:05 pm.

Next Scheduled Public Hearing: August 27, 2019

Respectfully submitted by Teresa Mahoney, Board Secretary and accepted at the October 8, 2019, meeting of the Zoning Board of Appeals.

Accepted as Presented;

WLB - 10/08/19

Chairperson Susan Pawlisheck

Cc: Town Clerk