



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

MEETING MINUTES- PUBLIC HEARING

Hearing Date: October 22, 2019 @ 7:00 pm

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

Member (s) Absent: Paul Descoteaux

Additional Persons Present: Scott Vandewalle, Building (Inspector)

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

(Chair) opens the meeting and states this case has been heard on September 24th, October 8th and now again tonight.

1. Continued Public Hearings

Case No. 19-23 Petition for Relief by Administrative Appeal regarding an appeal of the Zoning Enforcement letter issued by the Building Inspector dated July 24, 2019.

Address: 109-113 Bridge Road

Map 15, Lots 25 and 26

Applicant(s): Plum Island LLC

(Attorney Lisa Mead) approaches the podium and states as the Chair has noted, her applicant was here on October 8th to appeal a violation notice issued on July 24, 2019 from the Building Inspector/Salisbury Zoning Officer. The applicant's position is that the notice is insufficient; there are not enough details on the violations that occurred and also that the site plan review has 5 years to be implemented and the client has not implemented it so he cannot be in violation of it. (Attorney) states that at the last meeting, the Board wanted more information, which the Attorney provided on October 10th. (Attorney) received the Building Inspector's

correspondence this past Friday; it was a draft letter which specified the deficiencies/violations in regard to the site plan. The Inspector's letter indicated (13) violations, (4) of which related to the site plan approval and (9) which were related to other zoning violations; nothing having to do with the site plan approval.

(Attorney) states her applicant is here tonight to 1) overturn the Inspector's decision on the site plan approval and 2) not to do anything in regard to the (9) other issues he raised because the applicant hasn't been given an enforcement order. The Inspector did not serve the applicant notice except yesterday or today he received a final letter with photos of the alleged violations which were taken October 16th, past the enforcement order date. The applicant's violation order in July was related solely to the site plan review. **(Attorney)** suggests again that the original notice should be overturned because it was not specific enough and the applicant did not have adequate notice of what the violations are.

(Attorney) goes through parts of the letter and notes that Violation #6 is a requirement of the Town. She also refers to Finding #5 and again states it is for the Town to do; not the applicant.

(Inspector) states he has seen pedestrians jay walking across the roadway and the applicant has to supply safety measures. **(Attorney)** states this not a Zoning enforcement matter; it is a public safety matter.

(Attorney) then states the applicant has 5 years to implement the site plan approval, and it has not been done yet. She again requests that the Board overturn the enforcement letter of July 24th. She states regarding the (9) new allegations, that they have nothing to do with site plan improvements. They are other zoning violations. If the applicant gets notice, he will come into compliance or do an appeal.

(Chair) states that for the record, Mr. Henderson and she have watched the previous meeting so they can participate and vote on this case. The people voting tonight are the regular members and Drew Dana.

(Chair) states the argument is 2 fold. She states the first letter did not give you actionable items to discuss with your client and so the whole case should be dismissed because of this.

(Chair) continues that the applicant has received further details from the Inspector on the violations and your argument is that these exceed the original scope which was the site approval.

(Attorney) states the reason the July 24th enforcement order should be denied is because it was not specific enough. Also, the deficiencies he noted on current letter, they are not deficiencies at all. One is an obligation of the Town and 9 of the things provided have nothing to do with site plan approval; they are zoning enforcement matters. The applicant has gotten no notice of violation for these.

(Inspector) states he worked with the Planning Department and we feel these are violations of the site plan that are occurring.

(Chair) states that if no action has been taken to develop the plan but they are beginning to use the land as they will in the future, i.e., parking trucks etc. is what you have detailed here.

(Inspector) responds yes.

(Mr. DePetrillo) inquires if these (6) violation orders are separate; would they be (6) different enforcement orders given? If they have not implemented the site plan, how can that happen.

(Inspector) states he does not agree that the site plan has not been implemented; they are using the site and there were certain conditions put on not to use it in certain ways.

(Attorney) states the site plan at this address was triggered here by the renovations to the 6k foot structure. The renovations are not happening. There are trucks there on a rotating basis but it is not a violation of the site plan approval. In looking at the Inspectors letter of 10/18; which was just received today, he sites violations to the site plan. The July 24th letter is deficient; the applicant is permitted under the law to be given notice of what the violation is. It just says violation of site plan. He does have a right to issue an enforcement letter to the applicant but his letter was insufficient. He did not have proper notice. People are allowed to walk across the property and they can park on their property. We do not have to implement the site plan and the town is supposed to do some of these things.

(Chair) asks Inspector about the issuance of an order; in the event that for some reason we found they had not been given a sufficient notice, are you legally able to re-issue a new order with all the details. **(Inspector)** responds that yes we can do that if you were to make that determination. **(Chair)** asks if there is a possibility that the violations document can be separated into the site plan ones and the other ones. **(Inspector)** responds they will be but he feels they are all related to the site plan.

(Chair) states we need to make a decision on whether to put aside the original enforcement letter because it did not have enough detail and have the Inspector reissue that or do we act upon what we currently have. She states her opinion is that some go with the site plan and some are basic zoning violations.

(Attorney) states it is a law that we get notice of what the violation is so we can correct or appeal it. The applicant got notice of all new violations that he had no opportunity to rectify or appeal. People are allowed to use their property in Salisbury outside of site plan approval.

(Attorney) reads the uses that need site plan approval. Site plan approval never has to be implemented so there are no site plan review violations.

(Inspector) states he disagrees. The table of uses in zoning is intended to control how property is used. Some things are allowed and some are not. Certain things rise to the level that a site plan is needed before you commence this use. They voluntarily went to site plan; no building permit is involved/associated. They are using the site but not in compliance. It said when you

begin to use it, they said specifically they would not park an unregistered vehicle or people would not walk across the site. If you have questions on the legality of it, you can bring town counsel in.

(Attorney) refers to the decision, which is the controlling document, on where it says they will never walk across the street or park an unregistered vehicle. **(Inspector)** states the decision is based on the statements made in the Planning Board meeting and recorded in the minutes. It is fair to say if false statements were made, this may be in question.

(Attorney) states the enforceable document is the decision. She then refers to the July 24, 2019 violation letter and reads a part of it and mentions 300-29A. It says likely; not did.

(Ms. Tremblay) refers to an email from Mr. Cowey on August 17th that they are using the building for storage; so it sounds like they are using the building. **(Attorney)** responds that they are but they have not renovated the building which is the trigger under site plan review

(Attorney) states that all this discussion shows that an order has to be more specific; it was vague. It did not tell the applicant he was violating site plan approval. He is required to do that. The Inspector has now added on to a list that goes well beyond site plan approval. And site plan approval has not started yet. It our contention that the things that trigger site plan review have not yet occurred and we did not have notice of it

(Chair) states her opinion is that she does not believe the initial letter contained enough detail for action from the owner. That is owed to the recipient; it was not enough information to act upon in the first notice.

(Mr. Dana) states he is a little conflicted as there are the violations from the Inspector and the issue of the site plan review. He feels that is separate. **(Chair)** states the site plan review and the approval has happened; this has nothing to do with the Board. **(Mr. Dana)** asks if the violations are relevant and maybe Town Counsel can advise regarding the use.

(Chair) states they can start with the letter that was issued and that the Inspector sees them all together; the site plan and zoning bylaw violations.

(Inspector) states the first (6) items are tied into the site plan and if you overturn them he cannot proceed with any of those as they are based on compliance with the site plan. If you overturn it, you are basically stating the site plan is not applicable at this time so he cannot pursue those items. The Board will be essentially agreeing with the applicant that the site plan has not been activated yet therefore there cannot be any violations.

(Mr. DePetrillo) states the applicant has concerns that he did not receive specific information until just recently; if this had been sent ahead of time, they could have addressed it. If the Board agrees to support your order, they will get fined.

(Inspector) states many of these decisions are tied into the site plan; he will have to look for other zoning issues.

(Chair) states the opinion is that the original document did not provide the specificity required to act; the Board would like to see that done. We will rescind that letter as we want it rewritten and redelivered.

(Attorney) states the Board has the authority to annul or overturn the enforcement order for lack of specificity, period.

(Chair) states we want all this stuff to be addressed but we want to give them the time required to respond to it. **(Inspector)** states that will make it difficult to pursue most of these issues.

(Mr. DePetrillo) suggests to maybe take it to Town Counsel for an opinion and review.

(Attorney) states I want to make sure Town Counsel has all of the documents and knows that the enforcement order lacks adequate specificity for us to know what to do. The later added material, some of it could maybe be addressed, if not all but if the Board overturned his enforcement order for lack of specificity, there is nothing stopping him from going out and issuing a proper enforcement order.

(Attorney) states her request for a continuance to the first week in December (2019). **(Chair)** replies that can be accommodated.

(Inspector) asks what the Board specifically what they would like Town Counsel to address.

(Chair) states she would like a couple of opinions such as if the Building Inspector can annul the first letter and then reissue. **(Inspector)** states the determination to proceed is his decision alone, not Town Counsels. They won't give you guidance on that. If the Board overturns the first letter, the Inspector would not reissue that at this time. **(Chair)** states she is not willing to do that as there is some stuff here to be fixed but she states that anyone that owns property and has been notified of any violation deserves to have the details so they can make corrections. The 2nd opinion from the Town Attorney is site plan review and site plan approval; when it starts and the use. The Planning Department and the Inspector feel they are using it. **(Chair)** wants clarification.

(Attorney) states that if the Board agrees the letter was not specific enough and the Building Inspector issued another enforcement order and her client appealed it, you would then have the opportunity to get an opinion from Town Counsel about when site plan review starts and doesn't start. **(Attorney)** continues that the Building Inspector has said it is his decision and his alone on when to do an enforcement order, therefore the Board can make a decision relative to the July 24th enforcement order stating that it was not specific enough; he could then issue an

enforcement order and the applicant could appeal or react to it. The Board could seek Town Counsel opinion at that time.

(Chair) states there is substance in what the Building Inspector wrote. In her opinion, there are violations that need to be addressed. She does not want the Inspector to NOT issue another order. **(Inspector)** will talk with the Planning Board to see if this should be pursued further.

(Mr. DePetrillo) inquires as to why this should go to Town Counsel. **(Inspector)** responds that a lot of the points made by the attorney were her opinions. Her opinions should not be the law and Town Counsel is not present to hear this.

(Chair) states she would like to continue this case and get input from Town Counsel. **(Attorney)** confirms the continuance and inquires what the Board is asking of Town Counsel. **(Chair)** responds she wants information on when site plan approval begins.

MOTION

(Mr. Henderson) makes a motion to continue Case 19-23 to the next meeting on December 10, 2019. **(Mr. Dana)** seconds the motion.

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

(Attorney) completes the Case Continuation form

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. DePetrillo, Mr. Henderson seconds and approved by a 5-0 vote. Meeting is adjourned at 7:55 pm.

Next Scheduled Public Hearing: November 12, 2019

Respectfully submitted by Teresa Mahoney, Board Secretary and accepted at the February 25, 2020 meeting of the Zoning Board of Appeals.

Accepted as Presented;



Chairperson Susan Pawlisheck

Cc: Town Clerk