



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

**MEETING MINUTES – PUBLIC HEARING**

**Hearing Date: December 10, 2019 @ 7:00 pm in the Colchester Meeting Room**

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

**Member (s) Absent:** Drew Dana, John Schillizzi

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

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

**1. New Public Hearings**

**Case No. 19-28 Petition for Relief by Administrative Appeal** regarding an appeal of the denial letter issued by the Building Inspector dated October 8, 2019.

**Address:** 109 Rabbit Road      **Map 18, Lot 3**

**Applicant(s):** Outdoor Media Properties

**(Attorney)** Jesse Schomer, Law firm of Regnante, Sterio, Wakefield, MA approaches the podium and states he is representing the applicant. He also states Alyssa Albertelli Campbell and Attorney David Gallagher are present.

**(Attorney Schomer)** states that because the issues involve an administrative appeal, he would like to state what the issues before the Board are tonight and what are not issues. He states he is not here to talk about whether signs are good or bad; if electronic signs are permitted, and whether there is an effect on the neighborhood. The Board has already ruled on these issues back in March, 2018 when the Board unanimously voted to grant a Special Permit for the electronic sign that Outdoor Media proposes to build at 109 Rabbit Road. These are all settled questions. The issue tonight is about a somewhat arcane complicated legal question of the interpretation of Section 6 Chapter 40A of the Mass General Laws, which is the state's Zoning Act. The issue of legal interpretation is very complicated but the effect is important for

Outdoor Media Properties. **(Attorney)** states that Section 6 provides grandfathering protection for structures, uses, building permits and special permits that were issued, built or commenced before the enactment of a Zoning change. There was a Zoning change that took place earlier this year; over a year after this Board voted unanimously to grant a Special Permit to Outdoor Media. The applicant is contending tonight that the zoning change was not applicable to this Special Permit that the Board granted. **(Attorney)** states the legal questions for the Board to make findings on are:

1) Is the 2018 Special Permit grandfathered? His opinion is yes under Section 6 of the Zoning Act because it was issued prior to the issuance of notice of the 2019 Zoning changes that banned electronic signs. 2) Did work or use commence within (12) months of issuance? His opinion is yes. 3) Were there real practical impediments that delayed the start of work or delayed the commencement of actually putting up the actual sign and why it can't be seen above 95 northbound to this day. His opinion is yes. These are the (3) issues for the board tonight. **(Attorney)** states that if any of these answers are yes, the result is that the Zoning changes in 2019 are not applicable to the 2018 Special Permit granted by this board and that the Building Inspector was incorrect in refusing the Building Permits.

**(Attorney)** explains the history of the billboard sign applications since 2014; there were two applications for billboard signs; Northvision and Clear Channel. The Board granted Northvision and denied Clear Channel and then came 3 years of litigation. In 2016, Outdoor Media applied for a fixed billboard sign, non-electronic and then came back for a modification in 2 years to allow an electronic bill board sign and it was approved unanimously and was not appealed; it was recorded at the Registry to make official on April 4, 2018. Outdoor Media had no way to build the sign for the reason that under DOT, you cannot have more than (1) electronic billboard sign within 1,000 feet of another one. Outdoor Media opened negotiations with Northvision beginning in April and ending in December 2018. In December, there was a court decision which overturned this Board's special permit and remanded everything back to the Board. Within the month, the agreement provided that Northvision would withdraw their state permit and Outdoor Media would proceed to the state for that permit. In January, 2019, an agreement was reached. **(Attorney)** states that construction work did begin on the site such as a site plan and wetland studies In February, Outdoor Media applied to the Conservation Board and the process lasted over (7) months; much longer than usual. The Order of Conditions was then issued. In March, the application was sent to Mass DOT and that took (3) months till June. As of August, local Conservation, the state permit, and the applicant already had a Special Permit from this board were done. The final step was applying for the building permit. The Building Inspector denied the permits in October. However, the local sign bylaw would no longer be governed by this bylaw, but rather by the Zoning bylaw; voted on at May Town Meeting. This happened a year after approval by the ZBA.

**(Attorney)** continues that there is disagreement with the Building Inspector in denying the permit. Attorney refers to Section 6 that he states is the state grandfathering provision in the Zoning act. It should protect permits that were allowed and or approved prior to the Zoning change.

**(Attorney)** refers back to legal questions mentioned prior and states the 2018 Special Permit is grandfathered?

**(Attorney)** inquires why the Building Inspector denied the building permits. Attorney states that maybe he was looking at another provision of Section 6. It provides instruction to local towns and cities that you are required to comply with new zoning changes if you don't start any work or construction within 12 months. **(Attorney)** notes this in an instruction to the town and states the Town has not enacted this provision so it does not matter if construction or use has started in 12 months pertaining to this project.

**(Attorney)** states the permit is grandfathered. The construction and the use of the Special Permit started in January of 2019; approximately (9) months within the issuance of the Special Permit.

**(Attorney)** refers to the 3<sup>rd</sup> statement above concerning any real practical impediments. He states there is case law and he mentions 3 different cases from 1973, 2002 and 2005 which states if there are any practical impediments to the start of work, the time limit to do so is told.

**(Attorney)** states there was a period of time between April and December of 2018 when Outdoor Media could not proceed because they had to clear the path of the state permit that Northvision already had. That was an impediment; nothing could be done at the sight. Also, the applicant had to get Conservation and State approval. All that took place from January to August 2019.

**(Attorney)** states that all (3) questions have been answered YES. Therefore the 2019 Zoning change does not affect the 2018 Special Permit unanimously granted by this Board. We contend this is the correct result and ask the Board to overturn the decision of the Building Inspector.

**(Inspector)** states there were (2) separate violation notices issued. One was under Chapter 214 and one under 300 which is Zoning; there will have to be separate decisions. The initial Special Permit was not granted as a Zoning permit; it was granted as a Sign permit under the general bylaw. **(Inspector)** continues he does not think it is entitled to any of the protections of Chapter 40A. Since that time, the Town has enacted a bylaw that no longer allows them and he states that it is his determination that since they were not protected by Chapter 40A, since it's a general bylaw Special Permit, and the fact that the bylaw changed and they did not apply for the permits as required, he did not know of any work that commenced, also in violation of the new Salisbury bylaw so he had to deny the permit.

**(Chair)** confirms there are (2) denials; one for the general bylaw and one for the Zoning bylaw and the first permit they applied for is the Sign Permit. **(Inspector)** responds that they applied initially for a permit because no free standing signs were allowed. **(Chair)** confirms the applicant came back before the Board and asked for a modification/change. She inquires of the Building Inspector when the timeline started. **(Inspector)** states it would be from the second permit. **(Chair)** states, that in the Inspector's opinion, there was no forward progress made at the sight. **(Inspector)** states that there was no evidence of work when the bylaw went into effect in May and another building permit had not been filed. Generally, a building permit application is a trigger for the beginning of a project.

**(Attorney)** responds to Inspector's analysis and states he respectfully disagrees. The Sign bylaw purports to be a general bylaw but it operates in the same fashion as a Zoning bylaw. He can provide case law records. **(Attorney)** states a Sign bylaw is treated under Section 6 and a Special Permit only exists under Zoning. It is subject to Chapter 40A. **(Attorney)** adds that the Sign bylaw effectively is an exception to the provisions of the Zoning bylaw and they should be interpreted as one and the same.

**(Ms. Tremblay)** asks that when Northvision sold the assets and rights to Outdoor Media, does the approval go to the company or the site. **(Attorney)** states it goes to the company; it is not site specific.

**(Chair)** states the language may sound like there was a transfer of ownership, but Northvision withdrew their application and then Outdoor Media applied for it through the state. There was no transfer of ownership.

**Attorney David Gallagher**, Law firm of Regnante, Sterio, Wakefield, MA was involved in the OAA permit process and states it is site specific. **(Chair)** states it is site specific because a new permit was granted; not transferred.

**(Mr. DePetrillo)** inquires if the applicant had to wait until the OAA grants the permit before going to the building inspector?

**(Attorney)** responds yes and states there are certain costs involved such as drawings, engineer work, architects, etc.

**(Chair)** states it is not like Outdoor Media didn't know that someone else had a permit and had gone to OAA and were also within 1,000 feet. **(Attorney)** responds that is true and they knew that was their task in the next 12 months; to clear that obstacle.

**(Chair)** asks for abutters:

**Abutter 1** - Donna Bartlett, Salisbury Plains. **(Abutter 1)** states she read over the Board packet and found a Massachusetts Department of Transportation list which she hands out to the Board. She refers to 'F' regarding being within 500 feet of another sign; which the new sign is intending to face. She shows a picture of a sign already at Exit 60, a google earth picture, showing the feet between them and feels this sign cannot go in based on that.

**Abutter 2** - Jack Sanborn, Locust Street. **(Abutter 2)** states he and several other residents went to a meeting in Boston at DOT and gave their say on why they didn't want it to be built. He states that at the end, applicant Mrs. Campbell got up and spoke. J. Romano, 'kingpin' at DOT asked her if she was aware the billboard had to be 500 feet away from any exit. **(Abutter 2)** states that Mrs. Campbell said she was aware of it. **(Abutter 2)** states that is not so; he states that where this sign is going, there is an exit right across the street and explains the Main Street exit etc. and it is only about 300 foot; shy of extra 200 feet. It would be a safety issue if they got permission to put it up.

**Abutter 3** - Gene Willis, Folly Mill Road. **Abutter 3** explains he was at the same meeting as Abutter 2 and brought up the measurement point. He points out that the State said they took measurements and it was all in compliance. He states he asked them specifically about the whole right northbound lane from 495 to getting to Exit 60, being a ramp. The state would not answer. **Abutter 3** believes this a public safety issue.

**(Chair)** reminds the audience that they are not there to decide if a permit should be approved. She states the Building Inspector has already determined not to issue the Building Permit because of the timeline and the fact that no progress has been made on the construction; so the applicant has not used the permit yet. **(Chair)** states unfortunately it is not about being safe; we can only address what has been issued.

**Abutter 4** - Cynthia Foster, 15 Locust Street. **(Abutter 4)** states that the property was under an enforcement order for years and no work was allowed there, so was the order lifted?

**(Chair)** asks how that is related to why we are here. Ms. Foster states that any work on that property should not commence unless order is/was lifted.

**(Attorney)** states the Board does not have to consider the timeline; what happened within 12 months. He states the local bylaw does not contain a provision in enacting that 12 month period. Under Section 6, his contention is that the 12 month period doesn't matter. The applicant does not have to start work although we contend we did. On question #1, we contend the 2018 Special Permit is grandfathered.

**(Attorney)** continues to follow up on the citizen's comments. He states the issue with the state permit; the time period to appeal that has expired. **(Attorney)** continues the State studied everything; the location of the sign was moved based on citizen's concerns and the proximity to the exit ramps. The State ultimately decided to issue the permit. His final point was in respect to the Enforcement order; that was another roadblock to clear.

**(Mr. DePetrillo)** makes a motion to close the discussion. **(Mr. Descoteaux)** seconds. Discussion closed.

**(Mr. DePetrillo)** suggests that Town Counsel offer an opinion as case law was mentioned. Ms. Tremblay, Mr. Descoteaux and Mr. Henderson agree there are legal issues.

**(Chair)** states the Board is only upholding or reversing the decision of the Building Inspector to issue a permit. The pleasure of the Board is to reach out to Town Counsel for input.

#### **MOTION**

**(Mr. Henderson)** makes a motion to continue Case 19-23 to the January 14, 2020 meeting.

**(Mr. DePetrillo)** seconds the motion.

**VOTES:** Ms. Pawlisheck, Mr. Descoteaux 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

**Case No. 19-29 Petition for Relief –Special Permit** regarding the replacement of a one story single family structure with a three story single family structure.

**Address:** 1 11<sup>th</sup> Street West    **Map 35, Lot 111**

**Applicant(s):** James and Ellen Casey

**(Mr. Ron Laffely)**, architect for the applicant approaches the podium and gives background on the project. This case was brought before the Board in 2015 and was approved. It has been delayed in land court and the permit has expired. **(Chair)** confirms the announcement vs the petition for the Special Permit. **(Mr. Laffely)** confirms that a one single-story structure home will be taken down and replace it with a 3 story single family structure. **(Chair)** states there are (2) units on the lot and only one is being taken down. **(Inspector)** states the citation in the advertisement was taken directly from the language used for the request for relief. That is what the ad was based on; the applicant's wording.

**(Mr. Laffely)** explains that in 2015, the project was to reduce (2) non-conformities on setbacks to meeting all setbacks. A replacement building would be built on piles; it was approved. It was then appealed by the easement that is adjacent to it; the case went to land court and it was resolved. The owner/applicant now has a dominant use to the easement. The applicant has full rights to the easement because the original easement language was difficult to understand and it took longer than usual. This is all cleared through land court. He states that also during this time, the applicant tried to make the existing building work within the 50% market value, but even minor repairs brought it over the 50%. The applicant's current intent is to take it down during the winter; put in the pilings in March and then start construction before the summer. **(Mr. Laffely)** states the one thing that has changed since the 2015 presentation is that the (2) elevated boardwalks that were to go out to the easement are larger than 25 square feet. That is now being looked at as a deck. The applicant would prefer to go with the original design that had both means of egress coming out to the easement. It is a better location for the 2<sup>nd</sup> means of egress; takes person out to the street; the other easement would go to the backside to a fenced in area. We would prefer to have the choice to use either easement; one off the backside or stick with the original.

**(Chair)** asks that between 2015 and now, he please show the difference in plans. **(Mr. Laffely)** explains that the boardwalks that come out to the property line easement are 35 square feet, making it narrow. The other are 65 square feet; this is the only change that we got approval for that would be different.

**Mr. James Casey**, property owner, approaches the podium and explains that the easement area is elevated; about 3 feet high. When exiting from the house, you would have to walk downwards and walk near the conversation area. **(Mr. Laffely)** adds that there is currently a deck from the house all the way to the property line/easement. The plan is to take that deck out so there will be (2) boardwalks there, which he refers to on the presented plan. The boardwalk will come out to the existing retaining wall and stepping down. **(Mr. Laffely)** points out the change in the current plan and the older plan.

**(Chair)** inquires as to what version they want to go forward with? **(Mr. Laffely)** responds they would prefer to go with the version that was already approved. (August 31, 2016)

#### **MOTION**

**(Mr. Henderson)** makes a motion to approve the Special Permit as it is not more detrimental to the neighborhood and pertaining to the plans approved from August 31, 2016. **(Mr. DePetrillo)** seconds the motion.

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

#### **A. Minutes**

**August 27, 2019** meeting minutes needed to be approved and then signed by the **(Chair)**. Mr. Henderson makes a motion to accept the minutes; Mr. Descoteaux seconds. Minutes approved by all Board Members.

**September 10, 2019** meeting minutes needed to be approved and then signed by the **(Chair)**. Ms. Tremblay makes a motion to accept the minutes; Mr. Descoteaux seconds. Minutes approved by all Board Members.

**September 24, 2019** meeting minutes needed to be approved and then signed by the **(Chair)**. Mr. Henderson makes a motion to accept the minutes; Mr. Descoteaux seconds. Minutes approved by all Board Members.

#### **B. Correspondence and Other Board Business**

**(Mr. DePetrillo)** reads aloud a letter emailed to the Board from Sheffield Village residents concerning 40B units. **(Chair)** and **(Inspector)** are not familiar with the issue concerning reimbursement for stove purchases. **(Chair)** will reach out to Lisa Pearson, Planning Director.

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. DePetrillo seconds and approved by a 5-0 vote. Meeting is adjourned at 8:20 pm.

Next Scheduled Public Hearing: January 14, 2020

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