



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

MEETING MINUTES- PUBLIC HEARING

Hearing Date: March 28, 2023 @ 7:00 pm

Members Present: Derek DePetrillo (Chair), John Schillizzi (Vice Chair), Drew Dana, CJ Fitzwater, Stephen Rossetti, and Tim Johnson

Additional Persons Present: Scott Vandewalle, Building/Zoning Commissioner and Jennifer Geary ZBA Admin

Derek DePetrillo called the meeting to order at 7:00pm.

Continued Public Hearings

Case No. 22-000032 Petition for Relief – Finding to request to remodel and extend an existing, non-conforming structure.

Address: 172 North End Blvd.

Map: 33, **Lot:** 87

Applicant(s): Timothy Beauregard

Chris Crump of CWC Designs represented the applicant and requested to withdraw the application without prejudice. He stated they may submit a new plan at another time. Mr. Vandewalle advised that they will have to re-notify the paper and abutters and file another application should they decide to propose another plan.

MOTION: Mr. Dana makes a motion to approve the applicant's request to withdraw without prejudice, Case No. 22-000032 at 172 North End Blvd. Mr. Rossetti seconds the motion.

VOTES: Mr. Rossetti, Mr. Schillizzi, Mr. Dana, Mr. Fitzwater, and Chair DePetrillo, vote in favor of the motion. Members express their vote individually and verbally. 5 in favor, 0 opposed.

Case No. 22-000034 Petition for Relief – Administrative Appeal to reverse the Building Commissioner's determination that a violation has occurred.

Address: 122 Rabbit Rd.

Map: 18 **Lot:** 124

Applicant(s): Joanne & Robert Tindle, Jr.

Attorney Robert Scarano was present to discuss the appeal. He reviewed the previous meeting, stating that he had provided documents dating back to 2000. The site visit occurred with the Building Inspector, Assistant Planner, and Conservation Agent. Photography was allowed at the

site visit. He also noted that he sent in a memorandum requesting the release of the Notice of Violation that was encumbering the property's title. Attorney Scarano also reviewed the statute of repose and how he believes it applies to the matter. He discussed the other items at issue including the retention basin and occupancy permits. He requested the violation be overturned.

Mr. Vandewalle confirmed that the site visit occurred. He stated that the retention basin viewed at the site visit didn't match the site plan. He also stated he doesn't agree with sequencing of hearing and documents as described by Attorney Scarano. Mr. Dana asked if Mr. Vandewalle had consulted with Town Counsel. Mr. Vandewalle stated they briefly had a conversation. He didn't find it necessary for Counsel to attend the site visit. He has kept them apprised, but hasn't requested an opinion at this time. Mr. Vandewalle explained that he is just looking for compliance with the Site Plan on record. He acknowledged there are differences of opinion on that. He hasn't requested anything specific from Counsel. Mr. Schillizzi asked if the 40x60 structure was considered an addition and not a freestanding building. Mr. Vandewalle explained that it is connected slightly by a walkway. Mr. Fitzwater asked if the issue on the Site Plan is the retention basin. Mr. Vandewalle replied it is the main one. He also noted that there is no occupancy permit for barn. There is a Business License, but no Occupancy per the building code. Mr. Fitzwater asked if there was anything with regards to the basin at the site. Mr. Vandewalle replied that there was a small depression, about 3 feet x 3 feet x 3 feet, in a different location than on the Site Plan. Mr. Fitzwater asked if there was any way to create resolution to accept that basin. Mr. Vandewalle explained that it's under the purview of the Planning Board. It's considered a Site Plan violation, they need word from planning that it's been cured to their satisfaction. Mr. DePetrillo asked what specifically will they need to do to be in compliance. Mr. Vandewalle explained they will need a sign off from planning on the site plan, final inspection for the certificate of occupancy, a building permit for the other structure, and a resolution with the differences in the basin. Mr. DePetrillo asked what was planning's opinion after site visit. Mr. Vandewalle replied that they felt it didn't match what was approved. He noted it was a very brief visit, and they didn't get into details. Mr. DePetrillo asked whether the site visit was beneficial. Mr. Vandewalle replied that it was, somewhat. He also noted that typically the engineer that created the site plan would come back and make as built for Planning review to close out that process. Mr. DePetrillo suggested they ask Town Counsel for an opinion. He thought the site visit would have been more helpful but the Board has more questions than answers. Mr. Schillizzi suggested they either refer it to counsel or to the Planning Board. Mr. Vandewalle advised he wasn't sure if it can be. Mr. Vandewalle stated they could get a counter memo from Town Counsel. Mr. Johnson asked if any other deviations from the site plan were observed during the site visit. Mr. Vandewalle replied that they were only given the opportunity to view the basin. Mr. Rossetti asked if the use extending onto other properties is still an issue. Mr. Vandewalle stated the properties are empty right now. Mr. Dana stated he would like clarification on the Statute of Repose. Mr. Fitzwater agreed that they need the opinion of Town Counsel. Attorney Scarano noted that no record is going to be sufficient on something from 23 years ago. He also stated that recording of a zoning violation is not authorized by statute. Typically, an action is filed, then the notice is recorded. Otherwise the title is slandered, and the owners can't sell the property. They are asking it be removed, as the applicant should be able to sell property. Mr. DePetrillo advised that it would be in the Board's best interest to get Town Counsel's opinion on taking the Notice off the registry. Attorney Scarano advised that the Building Commission

could pursue the violation with the new owners after the sale. Mr. DePetrillo, questioned how much of an issue would it be to remove the violation from the title. Mr. Vandewalle advised that the letter doesn't technically block the sale, a sale can continue. Even if it is removed, violation is still there. Recording the violation acts as public notification, and doesn't technically block sale. The next person basically buys the violation. Mr. Dana asked Mr. Vandewalle if he has the legal authority to record such violations. Mr. Vandewalle replied that he does, and has done so a number of times without controversy. Mr. Dana stated that as the applicant disagrees, he is not comfortable making a decision without Town Counsel's input. Mr. Vandewalle advised that he has talked to Town Counsel, at no point has Counsel said he was in the wrong. Attorney Scarano advised that title companies want a resolution before issuing a title policy. They don't want to wait until next month as the applicant has health concerns and doesn't have the time. Mr. DePetrillo stated they will push for an opinion from Counsel in 48 hours, but there's no guarantee they will get one in that time frame

MOTION: Mr. Fitzwater makes a motion to continue Case No. 22-000034 at 122 Rabbit Road to April 11, 2023 to refer the matter to Town Counsel, with a decision on the title within 48 hours. Mr. Schillizzi seconds the motion.

VOTES: Mr. Rossetti, Mr. Schillizzi, Mr. Dana, Mr. Fitzwater, and Chair DePetrillo, vote in favor of the motion. Members express their vote individually and verbally. 5 in favor, 0 opposed.

Case No. 23-000003 Petition for Relief – Variance to request relief from the front yard setback requirements for the construction of a proposed commercial building and associated improvements.

Address: 112 Elm St

Map: 17 **Lot:** 122

Applicant(s): Christopher Deluca

Brian Knowles represented the applicant. They are looking for relief from the front yard setback. They would like 32 feet instead of 50 feet, as there is a wetland at the rear of the property. They plan to raze the single family home and put in a commercial building. The existence of the wetland restricts the building to the front portion of the lot. Mr. Knowles explained that they originally filed in 2020 and it was granted, the decision has since expired due to COVID and cost delays. Mr. DePetrillo asked if it was the same project. Mr. Knowles replied it was, however previously they requested a 30 foot setback, now they're requesting 32 feet, so the building will be pushed back a little. It will be the same size building as originally proposed, and they have Conservation approvals in place. Mr. Vandewalle further explained that variances expire in two years if no action is taken.

MOTION: Mr. Dana makes a motion to approve Case No. 23-000003 at 112 Elm St. due to the substantial hardship created by the topography and the shape of the lot. Mr. Schillizzi seconds the motion.

VOTES: Mr. Rossetti, Mr. Schillizzi, Mr. Dana, Mr. Fitzwater, and Chair DePetrillo, vote in favor of the motion. Members express their vote individually and verbally. 5 in favor, 0 opposed.

New Public Hearings

Case No. 23-000001 Petition for Relief – Special Permit to remove the existing internally and externally illuminated signs and replace with internally illuminated signs.

Address: 46 Toll Rd.

Map: 19 **Lot:** 224

Applicant(s): Mary Stanton of Dasco Signs, on behalf of Cafua Realty Trust CXXXI, LLC

Scott Stanton with DASCO was present to discuss the project. He explained there was a remodel at the store, and existing signs were replaced with smaller signage. They are looking to internally illuminate the signs. Mr. Stanton reviewed and discussed photos of the old and new signs. Mr. Vandewalle stated they went through a similar remodel with the Dunkin Donuts across the street, it's the same concept.

MOTION: Mr. Fitzwater makes a motion to approve Case No. 23-000001 at 46 Toll Road. The requested use is essential and/or desirable to the public convenience or welfare; the use will not create undue traffic congestion or unduly impair pedestrian safety; the requested use will not overload any public water, drainage or sewer or other municipal system so as to adversely affect health, safety and general welfare of the Town; all special regulations for the use, as set forth in the Special Permit Table, or within the Bylaw section listing requirements for this permit, fulfilled and completed; the requested use will not impair the integrity or character of the district or adjoining districts so as to adversely affect health, safety and general welfare of the neighborhood; and the requested use, by its addition to a neighborhood, will not be more detrimental to the neighborhood. Mr. Schillizzi seconds the motion.

VOTES: Mr. Rossetti, Mr. Schillizzi, Mr. Dana, Mr. Fitzwater, and Chair DePetrillo, vote in favor of the motion. Members express their vote individually and verbally. 5 in favor, 0 opposed.

Case No. 23-000004 Petition for Relief – Special Permit to replace the existing sign with a new internally illuminated sign with changeable letters.

Address: 8 Lafayette Road

Map: 5 **Lot:** 16

Applicant(s): East Parish Church

Debbie Choate was present to represent the Church. They want to change the manually lettered sign to a digital changing sign. It will be the same size, and internally lit. Mr. Schillizzi asked if it would be static and not flashing. Ms. Choate replied there would be no animation. Mr. Fitzwater asked what hours it will be illuminated. Ms. Choate stated it can be controlled, it can

be lit all the time or on a schedule. It will display similar messaging as to the current sign, with service info, etc. Mr. Dana asked if they intend for it to be lit 24/7. Ms. Choate replied if possible, yes. It won't be glaring, they don't want it to be gaudy. Mr. Vandewalle asked how bright it will be, and if it can be dimmed if there are complaints. Ms. Choate replied that the brightness and timing can be controlled, and that it won't be inconsistent with the character of the church or neighborhood.

MOTION: Mr. Fitzwater makes a motion to approve Case No. 23-000004 at 8 Lafayette Road. The requested use is essential and/or desirable to the public convenience or welfare; the use will not create undue traffic congestion or unduly impair pedestrian safety; the requested use will not overload any public water, drainage or sewer or other municipal system so as to adversely affect health, safety and general welfare of the Town; all special regulations for the use, as set forth in the Special Permit Table, or within the Bylaw section listing requirements for this permit, fulfilled and completed; the requested use will not impair the integrity or character of the district or adjoining districts so as to adversely affect health, safety and general welfare of the neighborhood; and the requested use, by its addition to a neighborhood, will not be more detrimental to the neighborhood. Mr. Schillizzi seconds the motion.

VOTES: Mr. Rossetti, Mr. Schillizzi, Mr. Dana, Mr. Fitzwater, and Chair DePetrillo, vote in favor of the motion. Members express their vote individually and verbally. 5 in favor, 0 opposed.

Minutes

February 28, 2023 Meeting Minutes

MOTION: Mr. Schillizzi makes a motion to approve the February 28, 2023 meeting minutes as written. Mr. Rossetti seconds the motion.

VOTES: Mr. Rossetti, Mr. Schillizzi, Mr. Dana, Mr. Fitzwater, and Chair DePetrillo, vote in favor of the motion. Members express their vote individually and verbally. 5 in favor, 0 opposed.

Correspondence and Other Board Business

- **Zoning Board of Appeals Rules & Regulations update** Mr. Vandewalle advised that the Building Department received a call from an attorney looking for the Board's rules and regulations for 40Bs, so they may want to visit that as well. Mr. Schillizzi stated he hopes to get a draft together for next meeting. The Board discussed ruled to include in the Rules & Regulations
- Mr. Fitzwater announced that there is an important basketball game between Salisbury and Salem, MA taking place Wednesday night at the Boys & Girls Club.

Items Not Reasonably Anticipated by the Chair 48 Hours in Advance of the Meeting

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: Mr. Fitzwater makes a motion to adjourn the meeting. Mr. Dana seconds the motion.

VOTES: Mr. Rossetti, Mr. Schillizzi, Mr. Dana, Mr. Fitzwater, and Chair DePetrillo, vote in favor of the motion. Members express their vote individually and verbally. 5 in favor, 0 opposed.

Respectfully submitted by Jen Geary, Board Secretary and accepted at the April 11, 2023 meeting of the Zoning Board of Appeals.

Accepted as Presented:



Chairperson, Derek DePetrillo

Cc: Town Clerk