



TOWN OF SALISBURY
Zoning Board of Appeals Hearing
Colchester Room @ Town Hall, 5 Beach Rd
Meeting held remotely via Zoom

MEETING MINUTES- PUBLIC HEARING

Hearing Date: April 28, 2020 @ 7:00 pm

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

Member (s) Absent:

Kevin Henderson

Additional Persons Present: Building Commissioner - Scott Vandewalle, & Kate White ZBA Admin

Chairperson Pawlisheck called the meeting to order @ 7:00 pm.

1. New Public Hearing

Chair opens case:

Case No. 20-09 Petition for Relief – Variance to request relief from dimensional setbacks to extend existing two-floor elevator up one floor causing elevator shaft to exceed maximum height restrictions.

Address: 98 Elm Street **Map:** 17, **Lot:** 1

Applicant(s): DPW Realty, LLC

Clare Burhoe, representing DPW Realty, LLC explains the third-floor conversion of attic space into offices and the need to extend the two-floor elevator to the third floor, which would exceed the maximum height restriction of 35' by 4'9." The reason that the applicant is seeking to extend the elevator is twofold, first for handicap accessibility: Americans with Disabilities Act requires employers to make facilities accessible to qualified applicants with disabilities as a reasonable accommodation unless there is an undue hardship. There is also safety concerns, the Massachusetts Appeals Courts has now recognized safety as a substantial hardship; if the variance dimension the risk of existing harm or where it prevents a greater risk of harm that would result from compliance with the zoning ordinance. Hardship may merit a variance.

Chair: Does anyone from the Board have a question? Derek?
Mr. DePetrillo: Not right now.



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Chair: Does anyone from the Board have a question? Derek?
Mr. DePetrillo: Not right now.

Chair: John?

Mr. Schillizzi: No

Chair: Drew?

Mr. Dana: No questions.

Chair: Linda?

Ms. Tremblay: No

Chair: Paul?

Mr. Descoteaux: No

Chair: Are there any abutters or anyone in the audience that would like to ask a question?

Chair: Members voting are Paul Descoteaux, Derek DePetrillo, Susan Pawlisheck, Linda Tremblay & Drew Dana.

MOTION: Mr. DePetrillo makes a motion to grant the request for a variance, the substantial hardship is the safety concerns of the building and it meets topography, soil conditions and shape of the lot. Mr. Dana seconds the motion.

VOTES: Ms. Pawlisheck, Mr. DePetrillo, Ms. Tremblay, Mr. Descoteaux & Mr. Dana vote in favor of the motion. All members express their vote individually and verbally. 5 in favor, 0 opposed. Motion carries unanimously.

Chair opens case:

Case No. 20-10 Petition for Relief – Variance to request relief from dimensional requirements for proposed division of premises and adjacent premises.

Address: 14 First Street Unit A **Map: 7, Lot: 18A**

Applicant(s): Conrad Audette & Gena Bevilacqua
C/O Mead, Talerman and Costa LLC

Adam Costa, from Mead, Talerman and Costa, representing the applicant suggests opening case 20-11 as well.

Chair opens case:

Case No. 20-11 Petition for Relief – Variance to request relief from dimensional requirements for proposed division of premises and adjacent premises.

Address: 14 First Street Unit A **Map: 7, Lot: 18B**

Applicant(s): Mark Audette C/O Mead, Talerman and Costa LLC

Mr. Costa explains that the applicants are not proposing any changes to the site or modifications to any of the structures. The applicants are looking to separate one lot that has multiple structures on it into two lots; one lot would have the marina building w/apartment and the cottage and the other lot would have the two-family structure. Currently this property exists in a condominium form of ownership and is assessed separately by the Town. One applicant (Conrad Audette &

Gina Bevilaqua) owns the two family and the other applicant (Mark Audette) owns the marina building w/apartment and the cottage, each having common ownership in the shared land. Because the property is mixed use there has been a desire to separate the two-family dwelling from the marina and the adjacent cottage.

Relief needed for the two-family lot 14 First Street Unit A

- Proposed lot size is 11, 504 sq. ft. where one acre is required
- Proposed lot frontage is 110.2 ft where 150 ft is required
- Proposed lot has 29.1 ft front yard setback where 40 ft is required (unchanged from existing setback)
- Proposed lot has one side set back of 17.4 ft where 20 ft is required
- Proposed lot has the other side set back of 17.75 ft where 20 ft is required

Relief needed for the marina building and cottage lot 14 First St Unit B

- Proposed lot has 46.07 ft of frontage where 150 ft is required
- Proposed lot has one side setback of 8 ft where 20 ft is required
- The main building on this lot is higher than the 35 ft maximum height restriction

One thing that we did not touch upon in the letter is that there is a provision in M.G.L. Chapter 40a Section 10 that authorizes variances for soil conditions, odd shape or topography as they relate to the land, which we have touched upon, but also how they may relate to buildings. There is very little case law that talks about how that is possible, it is rare for these characteristics to apply to buildings because variances aren't often used in circumstances like these. This may be one of those circumstances where we're not just looking at the land, we're looking at the configuration of the site today and the fact that it's that configuration is the cause of a hardship.

Lastly, I wanted recognize the seven letters that we received from property owners along First Street in support of the proposal.

Chair: Thank you very much. Do any of the Board members have any questions. Paul?

Mr. Descoteaux: Just to be clear, I know this has to do with the lot lines and such, but clarifying there is no structural change here, correct?

Mr. Costa: Madam Chair, if I may?

Chair: Yes, please.

Mr. Costa: There will be no change proposed to any of the buildings. No modifications, no new construction proposed.

Mr. Descoteaux: Everything is staying the same way we see it right now, just the invisible lot line that we do not see.

Mr. Costa: That is correct and to that point, if I could, the one interesting thing that we warned our clients about is that it provides greater authority to the Board. If we modify the structures today where they are pre-existing, non-conforming those modifications in all likely hood would require special permit relief from the Board. To get these variances if we modify the structures in the future, now we need to modify the variances. So that's actually a more stringent standard, we

still have to come before the Board and we would have to meet the same statutory test for each of these buildings.

Mr. Descoteaux: Thank you.

Chair: John, do you have any questions?

Mr. Schillizzi: No, I do not

Chair: Linda questions?

Ms. Tremblay: No

Chair: Derek any questions?

Mr. DePetrillo: This doesn't have to go to the Planning Board at all in regards to diving the lots?

Chair: That is most likely a question for Scott.

Building Commissioner: I am not 100 percent certain if they need to get involved with an ANR or not, I would have to review that issue.

Mr. Costa: Madam Chair, may I?

Chair: You may.

Mr.: Costa: We do intend to submit an ANR Plan to the Planning Board. The general preference of the Town, and every Town does this somewhat differently, where an ANR Plan would necessitate some form of zoning relief; particularly relief that involved the frontage of the lot. Some Municipalities, some Boards, some Towns direct us to the Zoning Board first and then the Planning Board, that's consistently been how we have done it in Salisbury, other Boards prefer it the other way around, but we do intend to go to Planning and get their endorsement on the plan if we are able to obtain the zoning relief.

Chair: Okay, thank you. Drew do you have questions?

Mr. Dana: In relation to the two-family, I am assuming that the driveway off of First Street will be the parking for the two-family?

Mr. Costa: That is correct.

Mr. Dana: By dividing the lots, will the two family lose any parking capacity?

Mr. Costa: There will be no loss in parking capacity. There is an easement that runs along the rear of the proposed two-family lot just to assure proper access

Mr. Dana: No other questions.

Chair: Thank you. Do we have any abutters? Are there any other questions by the Board? Do we have a motion?

Members voting on both cases are Susan Pawlisheck, Derek DePetrillo, Paul Descoteaux, Linda Tremblay & John Schillizzi.

(CASE 20-10)

MOTION: Mr. DePetrillo makes a motion to grant the request for a variance for 14 First St Unit A, due to the topography of the land. Mr. Schillizzi seconds the motion.

VOTES: Ms. Pawlisheck, Mr. DePetrillo, Ms. Tremblay, Mr. Descoteaux & Mr. Schillizzi vote in favor of the motion. All members express their vote individually and verbally. 5 in favor, 0 opposed. Motion carries unanimously.

(CASE 20-11)

MOTION: Mr. DePetrillo makes a motion to grant the request for a variance for 14 First St Unit B, due to the topography of the land. Mr. Descoteaux seconds the motion.

VOTES: Ms. Pawlisheck, Mr. DePetrillo, Ms. Tremblay, Mr. Descoteaux & Mr. Schillizzi vote in favor of the motion. All members express their vote individually and verbally. 5 in favor, 0 opposed. Motion carries unanimously.

2. Executive Session

Chair: I will entertain a motion to go into Executive session under G.L. c.30A, §21(a)(3) to discuss strategy with respect to litigation regarding

1. Northeast Properties LLC v. Salisbury ZBA, 1977 CV 02164.
2. Thomas DeFronzo, et al. Susan Pawlisheck, et al. (Salisbury Zoning Board of Appeals), ZBA, Massachusetts Appeals Court Docket No. 2020-P-0022.

I declare that discussing these matters in open session may have a detrimental effect on the litigating position of the Board.

Derek: So moved.

Unanimously voted to move into executive session for the purpose of discussing strategy with respect to litigation regarding the aforementioned cases. Those present at the executive session will be members of the Board, the Building Commissioner, Robin Stein of KP Law and the admin to the Board. The Board will adjourn the meeting at the close of executive session and will not reconvene into open session.

Roll call vote: Mr. DePetrillo-yes; Mr. Schillizzi-yes; Ms. Tremblay-yes; Mr. Drew-yes; Mr. Descoteaux-yes; Chairman Pawlisheck-yes.

3. Minutes

None at this time

4. Correspondence and Other Board Business

None at this time

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

None at this time

6. 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.

Next Scheduled Public Hearing: May 12, 2020

Respectfully submitted by Kate White, Board Secretary and accepted at the July 14, 2020 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, looped 'S' and 'P'.

Chairperson Susan Pawlisheck

Cc: Town Clerk