



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: June 23, 2020 @ 7:00 pm

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

Member (s) Absent:

Kevin Henderson

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

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

1. Continued Public Hearing

Case No. 20-13 Petition for Relief – Administrative Appeal to appeal the Building Commissioners decision to deny the use of the structure as exists.

Address: 278 No End Blvd **Map:** 34, **Lot:** 114

Applicant(s): Freckle International LLC
C/O Susan Gavin

Chair: This case is back before the Board for a re-vote. A super majority vote was required in order to overturn the Building Commissioners decision.

Board discusses the case further.

Chair: What we are looking for is a motion to either uphold or overturn the Building Commissioners decision.

Members voting are: Ms. Pawlisheck, Mr. DePetrillo, Mr. Descoteaux, Mr. Dana and Mr. Schillizzi

MOTION: Mr. DePetrillo makes a motion to reverse the decision of the Building Commissioner. Ms. Descoteaux seconds the motion.

VOTES: Ms. Pawlisheck, Mr. Descoteaux, Mr. Schillizzi and Mr. DePetrillo vote in favor of the motion. Mr. Dana votes opposed. All members express their vote individually and verbally. 4 in favor, 1 opposed. Motion passes.

2. New Public Hearing

Remand 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): Northeast Properties & Investments LLC

Attorney Mark Griffin from Finneran & Nicholson, P.C. and Matt Steinel from Millennium Engineering are representing the applicant.

Mr. Griffin: Originally filed in May of 2019, the original application proposed to raze the three family and rebuild a three family home after several continuances the applicant came back with a two family proposal to try to accommodate Board and abutters with respect to some parking concerns. On August 13, 2019, the ZBA voted 3-2 and the petition was deemed denied because the ZBA used the Special Permit standard, which requires a super majority vote. The petitioner appealed this decision to Superior Court. The Town and the petitioner moved jointly to remand and the court allowed the remand request. The Court's order is that the ZBA shall hear the two unit proposal, which is what was previously denied, but the ZBA should utilize the standard for a finding not a special permit. A three vote is sufficient for this. The property is located in the R3 zoning district, the existing three family structure was built in and around 1900. It has been used as a seasonal rental continuously; it is a pre-existing, non-conforming as a multi-family use. This use is not allowed in the R3 district. The property is in the VE flood zone. The lot is also pre-existing, legally non-conforming for frontage where 40' is required, the lot is land locked. The front and side setbacks are non-conforming 2.4' and 3.3' respectively where 20' and 10' are required. The petitioner proposed to raze and reconstruct the building to reduce existing structural non-conformities, and did so, by centering the footprint on the lot. Each of the side setbacks are over the required 10', the front yard setback is still non-conforming, but it will be improved from 2.4' to 10.2'. Most importantly, the building will be elevated to get it out of the flood zone. First floor is the one unit and the second and third floors make up the other unit. The existing building has no onsite parking. It is pre-existing, legally non-conforming with respect to parking and the proposal does not change that. Mr. Griffin further explains to the Board that there are significant amounts of properties in that area that are landlocked and do not have onsite parking and are in similar disrepair as the subject property. The petitioner is seeking a finding and the finding standard is whether the structure or the use are substantially more detrimental than the existing non-conforming structure to the neighborhood and in this case the use is going down, it will look better in appearance and it will comply with flood regulations.

Mr. Steinel: In the original submittal when we discussed the issues, we were asked to go back to conservation commission and get an unofficial preliminary decision on whether they would allow parking up on the dune structure to try to address some of these concerns and try to provide some parking. The conservation commission was thoroughly against that, but subsequently did approve the plans before you as they conformed with the Wetlands Protection Act.

Chair: Thank you very much. Paul, do you have any questions?

Mr. Descoteaux: Clarify the units.

Mr. Griffin: First floor is the one unit and the second and third floors make up the other unit.

Mr. Descoteaux: Just to be clear, the conservation commission will allow no parking whatsoever between the building that is on the street and the new proposed building?

Mr. Steinel: They will not allow any parking on the barrier beach, up on the velocity zone. The petitioners looked at alternative parking solutions, but none that were supported because it could potentially cause damage and erosion to the primary frontal dune, which is the large mound of sand that building potentially sits on and is the primary protection for all of the street side properties from any storm or wave action. Anything that could impact dune vegetation is allowed.

Mr. Descoteaux: Again, and just to be clear, the structure in the front and the structure in the rear the conservation commission will not allow any parking whatsoever?

Mr. Steinel: Yes, that was their decision.

Mr. Descoteaux: What is the current state of the existing property structure is that occupied?

Mr. Griffin: Michael Surprenant is on the call and he could probably answer that, but there had been renters in it, but I do not know if there still are.

Mr. Descoteaux: I thought there was some sort of ruling or action that prohibited it from being occupied now due to the storm damage.

Mr. Steinel: No, at the last hearing that we had with this Board, I believe the Building Inspector had spoken up and that it hadn't reached that level yet, but he suspected that at the next storm or the next major inspection it would reach that level and he would be at that point.

Mr. Descoteaux: Scott, nothing that has caused this situation any more dire?

Building Commissioner: Not that I am aware of at this moment.

Chair: Thank you. Derek, do you have questions?

Mr. DePetrillo: What is the proposed height, again?

Mr. Griffin: 35 feet.

Mr. DePetrillo: I understand that the second and third floor are considered one unit, but I guess the question turns into, how many beds are on each level? My concern is that yes it is one unit but we now have more and more people there and causing more traffic to come through. It is just a concern that I have.

Chair: Drew, do you have any questions?

Mr. Dana: Have these plans changed since we last saw them in August of 2019 or are these the same ones?

Mr. Griffin: These are the same plans.

Mr. Dana: What is the expected total amount of vehicles that the applicant anticipates with this proposed structure?

Mr. Griffin: We do not know how many vehicles would be associated with the occupants of the units. Normally there would be two parking spaces per unit, but again it is pre-existing, non-conforming for parking so they do not have any parking spaces just like many of the other properties that I showed you on the aerial photo.

Mr. Dana: Scott, I have a question for you, when a building is completely razed to its foundation or beyond do the pre-existing, non-conforming attributes of the structure carry forward to the new structure?

Building Commissioner: Under current zoning we have Article 5 about pre-existing, non-conforming structures which primarily covers one and two families and are allowed to maintain certain non-conformities for a period of time. Generally, after two years, non-conformities will cease and the property will revert to its underlying zoning.

Mr. Dana: ok, no more questions madam chair.

Mr. Steinel: Could I ask for clarification, so the two-year period and the reversion to the underlying zoning requirements have to do with the abandonment of the property and at this time that has not occurred, correct?

Building Commissioner: to my knowledge that has not occurred yet.

Mr. Griffin: There was actually a Town Counsel opinion on that issue that was issued during the last hearing process that said that it did not apply to this property.

Chair: Linda, do you have any questions?

Ms. Tremblay: How many bedrooms in each unit?

Mr. Steinel: First floor (unit 1) has two bedrooms, second and third floor (unit 2) has four bedrooms; master on the second floor and the remaining three bedrooms on the third floor.

Mr. Griffin: Six bedrooms total.

Ms. Tremblay: Are the other landlocked properties in the aerial photo, single family or multi-family homes?

Mr. Griffin: I did not do that deep a dive into that, I thought the major issue to highlight to the Board was the similarity in these lots and the landlocked buildings. I do not believe that it is the quantity of parking that is required it is whether it is the pre-existing, non-conforming and so if it

is you are not legally required to provide any more parking than you already have when you are going through a Finding. If it were not then you would be required to go for a Variance.

Ms. Tremblay: Would this become a year round property?

Mr. Griffin: That is a possibility, but whether you are a multi-family property, a single-family residence, a two family residence you make any lawful use of your property, so it could go from a seasonal rental to a full time rental or it can go from a seasonal use to two condo unit and they are sold to families. The applicant is not required to commit to one or the other as long as it is a lawful use. I cannot tell you right now what that lawful use might be, but it should not matter in rendering your decision on whether it is substantially more detrimental to the neighborhood.

Mr. Steinel: I just wanted to bring up that the current structure is three units with seven bedrooms and the proposed structure is two units with six bedrooms, so we are reducing the quantity of bedrooms. Therefore, the potential for number of occupants and number of cars is decreased.

Chair: John, do you have any questions?

Mr. Schillizzi: Currently, how many of the three units are occupied?

Mr. Griffin: I do not have that information.

Chair: The owner is on the phone, Mr. Surprenant could you tells how many of the units are currently occupied?

Mr. Surprenant: All three units are currently rented.

Chair: Are there any abutters who would like to speak?

Robb Osinski: 183 Atlantic Ave, Trustee of Oceanside Royale Condo Association, speaking on behalf of himself and the other two unit owners at 183 Atlantic Ave. The 187 and 185 Atlantic Ave properties directly abuts 183 Atlantic Ave. Mr. Osinski believes that this proposal would be detrimental to the neighborhood and that this should not have come to the Board as a Finding. Mr. Osinski feels that the three rentals are causing tremendous problems with parking and this has always been the issue.

Chair: Thank you very much.

Don Egan: 195 Atlantic Ave, agrees with Mr. Osinski in regards to the parking issue.

Chair: Thank you.

Charles Takesian: resides at 9 16th Street West, owns 173 Atlantic Ave. Mr. Takesian reads from Town's Zoning Bylaws, Article 5, Section 300-20 Applicability; intent and purpose; existing uses. Mr. Takesian also reads from Article 5, Section 300-21A and 21B Extension or alteration. Mr. Takesian is looking for clarification as to why this case was brought in front of the Board as a Finding.

Chair: Scott could you provide clarification?

Building Commissioner: This is a complicated section to read and understand, but past history and case law suggested that pre-existing, non-conforming structure use was a correct interpretation of this. That was the determination that was made at the start of this and I have not heard any of the attorneys disagree with that.

Mr. Takesian: Explains that he is addressing the legality of the case, he believes that the Board should be considering at all three non-conformities; parking, use and structure.

Chair: Thank you very much.

Mike Kobos: 195 Atlantic Ave, expresses agreement with Mr. Osinski and Mr. Takesian and asks the Board not to allow a new structure to be built without available parking. Mr. Kobos asks Town Counsel if 185 Atlantic Ave and 187 Atlantic Ave should be combined, as they are owned in common ownership.

Building Commissioner: It is my understanding that you cannot merge lots with houses on them because it would result in a greater non-conformity.

Ms. Stein: There is a definition in the Zoning Bylaw (Section 300-5) Lot
“An area or parcel of land or any part thereof, not including water area, in common ownership, designated on a plan filed with the administrator of this bylaw by its owner or owners as a parcel to be used, developed or built upon as a unit under single ownership or control.” It appears that the Town has, by that definition, said it does not merge unless you say at the time that you intend to use as one lot.

Chair: So in other words we cannot make them merge unless they want to merge.

Ms. Stein: We did look at that and based on that definition in the bylaw we did conclude that they did not merge based on the information available to us.

Chair: Thank you.

Mr. Kobos: Mr. Kobos clarifies that this was not a rental property in the past, it was family occupied and therefore the family was able to control the parking. He feels renters are a lot less considerate when it comes to parking and that year round renters would create a bad situation for the neighborhood. He would like the Board to consider that this proposed structure would be substantially more detrimental to the neighborhood in regards to the parking situation.

Chair: Thank you for your input.

Mr. Osinski: Mr. Osinski feels that there is an overload of renters in these units, which was not the case with the previous owners. The renters are now parking cars on the easement that is supposed to be used to access the rental property, which is causing the renters to walk on the abutting property to access the rental property. Mr. Osinski believes that the prior owners sold

the property because they knew it would be condemned and the new owners should have combined the properties into one lot and built one structure on the lot. He does not feel that the applicants are trying to solve the parking problem. This should not be a finding, but rather a ruling of whether we should violate or allow an acceptance to zoning. Why are we even here?

Chair: We are here tonight because the applicant is here for a finding. If you took the front lot out of the equation and the applicants only purchased the rear lot, would your argument be the same?

Mr. Osinski: Absolutely, they needed to identify a solution to parking and they have yet to do that although they promised us they would solve this problem.

Chair: Thank you very much. Do we have anyone else that would like to speak?

Michael Surprenant: Co-owner of 187 Atlantic Ave. Mr. Surprenant feels that parking should not be the basis for the Boards decision tonight and that the abutters are making invalid points. The proposed structure will be improving the neighborhood.

Chair: Do we have any other abutters that wanted to speak? Do we have questions from the Board? Linda, questions?

Ms. Tremblay: No.

Chair: Drew, do you have questions?

Mr. Dana: What direction will the owners be giving to renters in regards to parking?

Mr. Griffin: I do not have the answer to that. I also think that is actually a management question.

Mr. Dana: It gets back to the fact of whether or not this is more detrimental to the neighborhood.

Mr. Griffin: Respectfully it does not. It is legally pre-existing; non-conforming to parking and as long as the people will avail themselves with parking. If they park illegally than it is a management issue with respect to the police enforcing the parking bylaw. When you are landlocked and have no parking, you do not have to provide it per zoning. A property is more substantially detrimental to a neighborhood as far as the structure itself and the use, not the management of the property.

Mr. Dana: I disagree. I think the use directly impacts the neighborhood and that's why we sit on this Board

Mr. Griffin: When I say the use, I mean the two family use.

Mr. Dana: Thank you, no further questions.

Chair: Thank you.

Andre Dubois: Co-owner of 187 Atlantic Ave. Mr. Dubois shares with the Board that they will not be renting the properties after new construction. They will be two condo units that they would sell to permanent residents. When they first purchased the property, the applicants thought they would be good rental properties, but have since changed their minds. Mr. Dubois believes that they have checked every possible box that they could in regards to parking. He claims that they did not promise to fix the parking situation, but to see if there was a way that it could be fixed. It is not the applicant's intention to hinder the neighborhood; they want to get into the project to provide the neighborhood with this improvement.

Chair: Thank you very much.

Mr. Osinski: Mr. Osinski reiterates his concerns with parking. He expresses that it is up to the Board to decide whether this is a finding or whether or not it should be a full analysis on whether or not it is respectful of the zoning that was put in place. This is not a finding hearing and if you folks think, it is, than I think there is a very serious social negative impact to the people living in this area.

Chair: Thank you very much. Derek, do you have any questions?

Mr. DePetrillo: The parking from what I understand is that there is no parking down there. There is nothing that they can do to alleviate that situation. They tried; they looked into it and found there was nothing that they could do to add parking. It was bought that way and nothing is going to change what they cannot do, they are stuck with what they have.

Chair: Thank you. Paul, do you have questions?

Mr. Descoteaux: Mr. Descoteaux supports improvements on the beach, but believes parking is detrimental to the neighborhood.

Chair: Mike Kobos.

Mr. Kobos: Mr. Kobos doesn't believe that it is 100 percent accurate to say that there is nothing the applicant can do about parking because they now own both lots.

Mr. Surprenant: Everyone keeps bringing up the parking, while everyone is parking on the street. In regards to year round parking, there isn't any parking on the street in the winter. If we decide to keep the units, if we decide to sell the units, everyone will still have the same issue.

Chair: Thank you very much. Rob Osinski.

Mr. Osinski: Mr. Osinski speaks to Mr. Surprenant's comments and parking.

Chair: Rob, other than the parking issue do you have any new information that you want to share with the Board?

Mr. Osinski: Mr. Osinski reiterates that he does not believe that this is a matter of a finding.

Chair: Attorney Griffin.

Mr. Griffin: The issue regarding whether it is a finding or whether it is not is irrelevant to this hearing. We are operating under a court remand order that states that we are here for a finding. We do not make that decision, it has been made for us; we are here for a finding. We are also operating on a petition for 187 Atlantic Ave; 185 Atlantic Ave does not matter. We have to look at 187 Atlantic Ave and whether that is substantially more detrimental to the neighborhood regarding the structure and use then what exists. We are making it more conforming dimensionally, we are reducing the number of units, we are improving the aesthetics and the structure itself, we are flood proofing it and these are all improvements and less density to the neighborhood.

Chair: Thank you very much. Is there any discussion with the Board?

Mr. DePetrillo: We are here for a finding, for that one piece of property and whether it is more detrimental to the neighborhood.

Building Commissioner: Building Commissioner reads Section 300-21 Extension or alteration Bylaw. Non-conforming structures or uses may be extended or altered provided that no such extension or alteration shall be permitted unless there is a finding by the Zoning Board of Appeals that such change, extension or alteration shall not be substantially more detrimental than the existing non-conforming use to the neighborhood. That is the extent of the language that you have to work with.

Chair: Thank you.

Chair: Do we have a motion? 15:46 left

Members voting are Ms. Pawlisheck, Mr. DePetrillo, Ms. Trembley, Mr. Descoteaux and Mr. Dana.

MOTION: Mr. DePetrillo makes a motion to approve the finding as the alteration or extension of the pre-existing, non-conforming structure is not substantially more detrimental to the neighborhood. Mr. Dana seconds the motion.

VOTES: Mr. DePetrillo votes in favor of the motion. Mr. Descoteaux, Mr. Dana, Ms. Tremblay and Ms. Pawlisheck vote opposed. All members express their vote individually and verbally. 1 in favor, 4 opposed. Motion does not pass.

Case No. 20-17 Petition for Relief – Variance to allow the alteration of a non-conforming structure by converting a portion of the existing deck into a home office.

Address: 52 Congress St **Map:** 13, **Lot:** 95

Applicant(s): Robert & Michelle Pimental

Robert Pimental: Seeking relief for a 12' x 16' addition located where their existing deck is located. The addition will be used as a home office. The footprint of the addition will not exceed the footprint of the existing deck; therefor it will not be located any closer to the property lines.

Chair: How is this non-conforming now?

Mr. Pimental: The addition and deck were allowed by a variance, any change to those would require a variance.

Mr. Dana: It is a side yard setback madam chair.

Chair: It looks like the lot and the frontage are also non-conforming.

Building Commissioner: That extension that creates the garage and deck, goes into the setback was granted by variance in the 80's. It would normally be a finding if it were pre-existing, non-conforming, but it is not; it does not predate bylaw. It was created by variance, therefor it can only be modified by variance.

Chair: Thank you. Questions from the Board.

Mr. DePetrillo: Asks for clarification on the hardship portion.

Building Commissioner: Suggests that the Board refers to the 1988 variance as it provides information regarding the hardships.

Chair: Due to the size and shape of the parcel, the applicant has no other choice but to apply for a variance for the construction of the proposed garage. The construction of the garage would not be a substantial detriment.

Chair: Does the Board have any questions? Do we have a motion?

Members voting are Ms. Pawlisheck, Mr. DePetrillo, Ms. Tremblay, Mr. Descoteaux and Mr. Schillizzi.

MOTION: Ms. Tremblay makes a motion to approve the request for variance due to the topography of the land. Mr. Descoteaux seconds the motion.

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

3. 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. 4 Sandy Lane – 4 Sandy Lane Realty Trust v. Town of Salisbury Zoning Board of Appeal, et al. Essex Superior Court Docket No. 1677CV01239

Litigation involving 4 Sandy Lane Realty Trust's G.L. c. 40A, §17 appeal of Zoning Board of Appeals Decisions 16-16 and 16-17 relative to the zoning status of the property located at 4

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

Mr. DePetrillo: So moved.

Mr. Descoteaux seconds.

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, Alex Weisheit 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. Descoteaux-yes; Ms. Tremblay-yes; Mr. Drew-yes; Mr. DePetrillo-yes; Mr. Schillizzi-yes; Chairman Pawlisheck-yes.

4. **Minutes**

None at this time.

5. **Correspondence and Other Board Business**

None at this time

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

None at this time

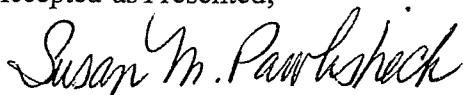
7. **Adjournment**

- 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: July 14, 2020

Respectfully submitted by Kate White, Board Secretary and accepted at the August 25, 2020 meeting of the Zoning Board of Appeals.

Accepted as Presented;



Chairperson Susan Pawlisheck

Cc: Town Clerk

