



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

**MEETING MINUTES- PUBLIC HEARING**

**Hearing Date: March 10, 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:** Scott Vandewalle, Building Commissioner, & Kate White ZBA Admin

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

**1. New Public Hearing**

**Case No. 20-05 Petition for Relief – Variance** to modify the previously granted variance requesting the relief from dimensional setbacks for existing decks and shed within the side yard setbacks.

**Address:** 233 No End Blvd Unit C   **Map:** 34, **Lot:** 26C

**Applicant(s):** Joseph Cutrona

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

Arthur Broadhurst representing the applicant, Joseph Cutrona, approaches the podium.  
Mr. Broadhurst: It was brought to my client's attention, by the Building Inspector, last fall that the rear decks extended to close to the setbacks. In 2000, the previous owners were granted a variance for the rear decks that were constructed within the backyard setbacks. When Joseph purchased the property, he added on to the existing rear deck, which extended onto the property located to the rear of the property. Mr. Cutrona currently has a purchase and sale agreement with the Mulcahy's for this said backland, the purchase of this property would alleviate the need for relief from the rear setback. In addition, the applicant is requesting relief for the shed on the property that lies within the side-yard setback.

Chair: It appears that the applicant did not seek out help from the Building Inspector to determine whether or not that they could build.

Mr. Broadhurst: That is correct; they did not seek out information from the Building Inspector when they added on to the deck.

Chair: What about the shed?

Mr. Broadhurst: The shed could be moved if the Board is not willing to grant the variance, but the applicant would like to avoid putting it in the front yard.

Chair: Other questions?

Mr. Descoteaux: Just to confirm, the acquisition of the backland would make this lot conform?

Mr. Broadhurst: It would make the rear conform.

Chair: So if you were to move the shed, where would you put it?

Mr. Broadhurst: That is the dilemma, it would look terrible in the front yard and it cannot be moved to the back of the lot due to the wetlands and the flooding. This shed is a necessity for the condo owners because it holds maintenance items for the lot such as a lawn mower and a snow blower.

Chair: If the sale of the land does not go through, what is the setback encroachment now?

Mr. Broadhurst: They would have to remove the addition to the deck (4' to 5') to make it conform back to the previously granted variance.

Chair: So was the variance for the 7.5' vs 10'.

Mr. Broadhurst: Correct

Chair: They are actually over the line now at 10'7".

Mr. Broadhurst: Yes. The P&S is signed if you would like a copy of that. If this gets approved, we will be closing on it right away.

Chair: This seems backwards to me. They would not need relief once they buy the land.

Mr. Broadhurst: The Building Inspector stated that we do need relief on the rear because we are modifying an existing variance to encompass the side setbacks.

Chair: If/when, they purchase the land will there be any encroachment on the rear?

Mr. Broadhurst: No

Chair: So the only remaining variance would be for the side.

**MOTION:** Mr. Descoteaux makes a motion to grant the request for a variance contingent upon the acquisition of the land, based on the shape of the existing lot along a paper street and wetlands, which has caused the relief request. Mr. DePetrillo seconds the motion.

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

**Case No. 20-06 Petition for Relief – Variance** to request relief from dimensional setbacks for proposed rooftop deck that exceeds maximum height restrictions.

**Address:** 97 Atlantic Ave    **Map:** 32, **Lot:** 141

**Applicant(s):** Gregg & MaryBeth Bonheur

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

Mr. Bonheur: Requesting the variance to build rooftop deck with railings and to build steps from third floor deck to access the rooftop deck.

Chair: What would the height of this be when completed?

Mr. Bonheur: The handrails will be 4' high, we are currently at 33'.

Chair: Are the railings all that you will be adding to the roof?

Mr. Bonheur: We would be putting wood decking w/rail on top of that.

Chair: Where will the stairs be?

Mr. Bonheur: On the third floor deck on the street side of the house.

Mr.: Descoteaux: Greg what is the square footage of the decking?

Mrs. Bonheur: The entire roof.

Chair: So the stairs are being added to an existing deck?

Mrs. Bonheur: Yes.

Mr. DePetrillo: What is the hardship? There is usually a reason as to why we grant a variance. Soil conditions, shape of the land, topography for example. There was not anything noted in the application.

Mrs. Bonheur: The sunset. There was a rooftop deck in our original house plans to be accessed from inside of the house. The contractor advised us against that and recommended that we access the rooftop deck from the outside.

Chair: Is this a single-family unit?

Mrs. Bonheur: It is a two family. The bottom floor is a rental and we occupy the second and third floors. The roof top deck will only be accessible through the third floor.

Chair: So there is no roof hatch now, as shown in the plans submitted?

Mrs. Bonheur: No

Mr. Dana: When you originally built, the house was the height for the original deck in the plans approved?

Mrs. Bonheur: At that time I didn't know that we would have to go in front of the Zoning Board because it was just an access hatch no deck.

Chair: In the original plans the height of the building including the hatch were 33.3', so how tall did the building turn out to be?

Mrs. Bonheur: The roof is exactly that height, the roof height did not change.

Chair: According to the plans, the roof height with the hatch is 33.3'; it has to be lower than that without the hatch. The Board would like to know the height of the building now because we are unable to determine that with the plans that were provided to us.

Mr. Schillizzi: What is the height of the deck? It looks like the deck is elevated from the roof and the railings are on top of that.

Mrs. Bonheur: I am not sure.

Chair: We are having trouble understanding why this is a hardship for you.

Mrs. Bonheur: We do not have a yard; I did not understand the hardship at that time. The ocean front portion of the lot is dunes with sea grass.

Chair: Do we have any other questions?

Mr. DePetrillo: I feel like the hardship is going to be the toughest obstacle to get around.

Mr. Bonheur: The hardship would be the lack of yard space that we have. We do not have room for chairs or to layout. If we had a roof deck, we could lay out on the roof deck.

Chair: To clarify, you have 4 decks before adding the roof deck.

Mr. Bonheur: Right, but they are all covered except for the top two that you only get partial sun on each depending on the time of day. Where on the roof deck you would get the sun all day.

Chair: Are there any other questions?

Chair: Do we have a motion?

**MOTION:** Mr. DePetrillo makes the motion to deny the petition for the height variance request at 97 Atlantic Ave.

Mr. Bonheur: Before the vote, I would like to request a continuance so that we could bring more information to the Board.

Chair: What is the pleasure of the Board?

Mr. DePetrillo: I do not have a problem with granting the request if you are going to bring new information to us.

Mr. Bonheur: Of course.

**MOTION:** Mr. DePetrillo makes the motion to withdraw his motion to deny the request for the variance at 97 Atlantic Ave. Mr. Descoteaux seconds the motion

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

Chair: you would like to request a continuance.

Mr. Bonheur: Yes.

Chair: Do I have a motion?

**MOTION:** Mr. Descoteaux makes the motion to grant the request for a continuance until April 14, 2020. Mr. DePetrillo seconds the motion.

**VOTES:** Ms. Pawlisheck, Ms. Tremblay & 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 No. 20-07 Petition for Relief – Variance** to modify the previously granted variance by requesting additional relief from dimensional setbacks to construct proposed single family home within the front and side and setbacks.

**Address:** 35 Old County Rd **Map:** 28, **Lot:** 36

**Applicant(s):** Jessica White

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

Mark Beaudry from Meridian Associates is representing applicant Jessica White

Mr. Beaudry: Jessica White is the applicant and she currently has the land at 35 Old County under agreement. This is a 7.5-acre lot to the right of the Salisbury Recycling Center.

Approximately 98% of the lot is wetlands. Back at the October 8, 2019 meeting, the Board granted Jessica a variance to be within 1 foot of the front yard setback. At that point, we started the process of going before the conservation commission. Halfway through that process the DEP decided that they would not approve this project if any part of the house were to be located in the wetlands. The house footprint is small; you may recall that the house is to be made out of three shipping containers, 600 square feet with a small deck attached to it. Soil tests were completed and the wetland area changed which made this a bit more challenging. So there is not any place on this lot that the house can be placed and still comply with setbacks and not be in the wetlands. After the remapping was done we found that all the uplands are located on the easterly side of the lot and that there is another upland area that could accommodate the house but it lies in the

side-yard setback requiring a variance. We would like to retain the front yard setback that the Board granted in October and request relief from the side-yard setback as well. The reason to retain the front yard setback would be if conservation and DEP request that we move the house back to the original upland area along the frontage.

Chair: So you are asking us to leave the front-yard variance in place even though it is not needed with the current configuration.

Mr. Beaudry: Yes and we are seeking additional relief from the side-yard now.

Chair: But you may not use the front-yard setback because the house is no longer going to be up against the road.

Mr. Beaudry: Yes with the only caveat with that is if the DEP allows nothing over the wetlands. Then Jessica would need both the front and side yard setbacks.

Chair: It is kind of like conditional variances.

Mr. Beaudry: The front-yard setback was granted and is still in place and now we are seeking additional relief for the side-yard setback.

Chair: It is conditional as to where you put the house.

Mr. Beaudry: I think we would agree to forego the front-yard setback if conservation and DEP allow the house to be put on the new location.

Ms. White approaches the podium and speaks on her own behalf to the hardship of the lot.

Chair asks Building Commissioner to approach the podium for clarification.

Chair: They have a variance in hand that would allow them to build a house close to the road, can this variance remain in place or does the variance have to go away for us allow a new variance?

Building Commissioner: You are essentially granting them a new variance, what we do to enforce the variance is look at the drawing that you approve. In this case, you are modifying the variance to a new plan.

Chair: So I am trying not to.

Building Commissioner: It can go either way, you can grant a new variance and moot the previously granted variance or you can call it a modification to a variance to match the new set of plans.

Chair: Does it have to be made moot?

Building Commissioner: If you are going to moot the first variance, you need to make it part of the decision.

Chair: Is it possible for a single plot of land to get a variance for this potential configuration and get a separate variance for this potential configuration and then act upon the one that complies with what the applicant needs to get done?

Building Commissioner: It is not appropriate to have a contingency based upon any other Board's authority. That being said, I do not think there should be two variances open at the same time. It would have to be one or the other, modification of the first variance or moot the first variance. We need to have one to act upon and enforce.

Mr. DePetrillo: How can we moot the other variance?

Building Commissioner: You would make it part of your decision.

Chair: Thank you for your clarification.

Mr. Beaudry: To make this easier, I suggest that the Board moot's the front yard setback and moves forward with the request for relief from the side yard setback. We will move forward with Conservation and DEP with that plan. If this is denied before Conservation and DEP, than we will have to come back to you and request the front yard setback again.

Chair: I want to be clear that there is no guarantee that the front yard setback will be approved again.

Mr. Beaudry: I understand.

Chair: Questions?

Mr. DePetrillo: Clarification on memo from DPW Director.

Chair: Are you aware of the memo from the DPW Director in regards to no sewer and water to that property?



Mr. Beaudry: I have not seen the memo, but we are aware and the water and sewer hookups are on the plan. We have discussed this project with the DPW.

Chair: I will provide you with a copy of the memo before you go. Any other questions? Do we have a motion?

**MOTION:** Mr. DePetrillo makes a motion to grant the request for the variance per plan based on the soil condition that the majority of the lot consists of wetlands. The majority of upland soil condition is located within the front and side setbacks along the easterly property line and the house cannot be located on any upland area without any side-yard setback relief per plan C1 dated 02/18/2020. Approval of this variance moots the previously granted variance. Mr. Descoteaux seconds the motion.

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

**Case No. 20-08 Petition for Relief – Special Permit** to request the allowance of an emotional support animal rescue facility for guinea pigs in a commercial zone.

**Address:** 129 Bridge Rd      **Map:** 14, **Lot:** 11  
**Applicant(s):** Kimie Smothermon

Ms. Smothermon: Explains to the Board about relocating her Guinea Pig sanctuary to Salisbury, MA. Ms. Smothermon further gives details as to how their sanctuary provides Guinea Pigs to children for emotional support. The sanctuary is also are a community resource center

Chair: Questions?

Mr. Descoteaux: I am trying to understand the business model and the process of how things work.

Ms. Smothermon: We do rescues, surrenders, and adoptions. We work with multiple animal control units throughout New England and a majority of Police Departments. We charge for adoptions from families that can afford it, we do charity walks, we sell t-shirts, once a month vendors come in to sell kid friendly items, we have volunteers that back us financially, etc.

Mr. DePetrillo: How many Guinea Pigs do you plan on having?

Ms. Smothermon: At our max, we had 182 in Hampton, NH.

Ms. Tremblay: Can you talk about the physical plans are you in a commercial building?

Ms. Smothermon: It is 1600 square feet, with three bedrooms, a full bathroom, kitchen and a dining room. One bedroom will be used as storage, one bedroom will be used for children to sit in with the Guinea Pigs, and one bedroom would be used if someone needed to onsite overnight.

Ms. Tremblay: So this is a three-bedroom house with off street parking?

Building Commissioner: This is a commercial building, it has a salon on one side and it had canvas connections on the opposite side. It has a residence on the upper floor. It is a two-story cement building with plenty of parking. Ms. Smothermon would be taking over a vacant commercial space that used to be occupied by canvas connections.

Chair: Do we have a motion?

**MOTION:** Mr. DePetrillo makes a motion to grant the Special Permit as the requested use is essential and/or desirable to the public convenience or welfare and it will not create undue congestion, it will not overload any public water, drainage or sewer. It will not impair the integrity of the neighborhood and it will not cause an excess of that use that could be detrimental to the neighborhood. Mr. Descoteaux seconds the motion.

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

**2. Minutes**

February 25, 2020 minutes to be approved

**MOTION:** Mr. Dana makes a motion to approve the meeting minutes from February 25, 2020 as is. Mr. DePetrillo seconds the motion.

**VOTES:** Ms. Pawlisheck and Mr. Schillizzi vote in favor of the motion. All members express their vote individually and verbally 4 in favor, 0 opposed. Motion carries unanimously.

**3. Correspondence and Other Board Business**

None at this time

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

None at this time

## 5. Adjournment

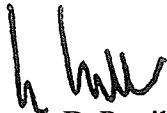
- The Board reserves the right to consider items on the agenda out of order. Not all items listed may in fact be discussed and other items not listed may also be brought up for discussion to the extent permitted by law.

**MOTION:** Mr. Schillizzi makes a motion to adjourn the meeting. Mr. DePetrillo seconds the motion.

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

Respectfully submitted by Kate White, Board Secretary and accepted at the May 26, 2020 meeting of the Zoning Board of Appeals.

Accepted as Presented;

A handwritten signature in black ink, appearing to read 'Derek DePetrillo', written over the printed name.

Derek DePetrillo

Cc: Town Clerk