

**SALISBURY PLANNING AND ZONING COMMISSION**  
**Special MEETING MINUTES**  
**OCTOBER 4, 2021, 6:30 PM**

Remote Meeting by Live Internet Video Stream and Telephone

**Members Present:**

Dr. Michael Klemens (Chairman)  
Martin Whalen (Secretary)  
Allen Cockerline (Commissioner)  
Bob Riva (Commissioner)  
Debra Allee (Alternate)  
Jon Higgins (Alternate)  
Dr. Danella Schiffer (Alternate)

**Staff Present:**

Abby Conroy, Land Use Administrator (LUA)

**Members Absent:**

Cathy Shyer (Commissioner)

**Brief Items and Announcements**

1. Call to Order / Seating of Members & Alternates

Chairman Klemens called the meeting to order at 6:28 PM and seated Alternate Schiffer to replace regular member Shyer.

**New Business**

2. #2021-0153 / Firehouse Place LLC (Capecelatro) / 9 & 9A Sharon Road / Special Permit for Parking Flexibility and Satellite Parking Associated with a Change of Use from Low Turnover Restaurant, Retail and Office to Low Turnover Restaurant and Apartment (Section 703.7 & 703.8) / Map 49 / Lot 27-2 / DOR 10/04/2021 Reception, *Consideration of Completeness, and Schedule Hearing*

Chairman Klemens asked for attorney Mark Capecelatro to be elevated to participant in the meeting and briefly explained the history of the building. He requested that the Commission determine the completeness of the application then schedule a public hearing.

Chairman Klemens explained the Town of Salisbury and the public have a significant interest in the property as it plays an important role in revitalization of downtown Lakeville. He stated that attorney Capecelatro's clients anticipated use of the property is compatible with the Town's. Attorney Capecelatro thanked the Commission for moving forward on this matter and explained his clients would like to use the entire first floor as a restaurant and dining space while the second floor would be used as a two-bedroom apartment for employee workforce housing. He went on to describe the current use of the building stating it is a small-scale food service and gym while upstairs is a yoga studio and office space. He noted that the proposal would provide jobs, economic vitality, and includes housing for at least one employee. Attorney Capecelatro conveyed the need to upgrade the parking for the proposed usage. He discussed that he and LUA Conroy determined 50 parking spaces would be needed to meet

44 regulations for the new use. LUA Conroy used visual aids from the proposal to display existing  
45 parking around the area and show areas of alteration.

46  
47 Attorney Capecelatro stated he had spoken with the Town first selectman Curtis Rand about  
48 reworking the parking along route 41 (a State route) to make it safer. He referred to regulations  
49 703.7 and 703.8 allowing the use of satellite parking adding that the area of Cannon Park could  
50 possibly be used for off-street parking. Attorney Capecelatro described that no change would  
51 be made to the south side of the building regarding parking. Spaces along the route 41 corridor  
52 would shrink and become parallel to the road. In the front of the main building more spaces  
53 would be added utilizing existing areas of planting in hardscapes. More spaces could be added  
54 to the south side of the smaller structure but trees would likely have to come down to make  
55 that possible. Attorney Capecelatro emphasized that he was looking for approval to use  
56 satellite parking to satisfy the requirements of the regulations and meet his client's goals.

57  
58 Chairman Klemens indicated there is variety of parking possibilities. Approval could be made  
59 based on phantom parking and if additional parking was needed the trees could come down  
60 along the side street. He believes there are many underutilized spaces in this area and further  
61 away. Alternate Allee is also passionate about increasing the vitality and pedestrian use in this  
62 area.

63  
64 Chairman Klemens asked Attorney Capecelatro why they chose to have one apartment upstairs  
65 rather than two single bedroom apartments that would better maximize the potential for  
66 workforce housing. Attorney Capecelatro responded it could possibly be used for a family, but  
67 he would take that thought to his clients as they are still in the design process of the interior.

68  
69 At this time Chairman Klemens asked the commission if they had any questions. Commissioner  
70 Cockerline inquired if LUA Conroy believed the application was complete; she replied that is the  
71 discretion of the Commission. Alternate Schiffer questioned if the apartment would be  
72 designated affordable workforce housing. Attorney Capecelatro explained this was not  
73 considered deed-restricted affordable housing but by nature it would be affordable housing.  
74 Chairman Klemens inquired if the residential space could turn into high end apartments.  
75 Attorney Capecelatro stated he did not believe it would be considered suitable for high-end  
76 housing.

77  
78 Commissioner Cockerline and Chairman Klemens requested setting a date for a hearing. It was  
79 agreed that a special meeting would be held on October 26, 2021, at 6:30 p.m.

80  
81 *Motion:* to schedule special meeting for a hearing on application #2021-0153 / Firehouse Place  
82 LLC (Capecelatro) / 9 & 9A Sharon Road / Special Permit for Parking Flexibility and Satellite  
83 Parking Associated with a Change of Use from Low Turnover Restaurant, Retail and Office to  
84 Low Turnover Restaurant and Apartment (Section 703.7 & 703.8) / Map 49 / Lot 27-2 October  
85 26, 2021 at 6:30pm via Zoom.

86  
87 Made by Commissioner Cockerline, seconded by Commissioner Riva.

88 Vote: 5-0-0.

89

90 **Public Hearing – 6:45 PM**

91

92 3. Public Hearing to Consider Opting Out of the Accessory Apartment Provisions of Section  
93 6 of Public Act No. 21-29/ *Public Hearing and Possible Consideration*

94

95 Commissioner Whalen read the hearing notice. Chairman Klemens asked LUA Conroy to review  
96 Section 6 of Public Act No. 21-29. She explained compared to our existing regulations we are  
97 very much in alignment with the new legislation apart from requiring a special permit for  
98 detached accessory structures.

99

100 LUA Conroy noted that the number of permits has almost doubled in the past few years. It is  
101 unclear if the increase in units was a result of housing demand triggered by the COVID-19  
102 pandemic, increased due diligence by the Commission and Staff, or a combination of the two.  
103 Since 2015, only three permits have been for attached units. Most people want accessory  
104 apartments as a separate unit. She added the committee already has regulations that allow for  
105 density bonuses and encourage accessory dwelling units as well as allowing for more flexibility  
106 than the legislation entails. The Town of Salisbury allows for detached units that do not meet  
107 setback requirements and promote adaptive use of structures with reasonable modifications  
108 although requiring a special permit.

109

110 LUA Conroy also shared a letter from the WPCA identifying concerns with the legislation.  
111 Additional hookup fees would no longer be allowed for these despite the increased use of the  
112 sewer systems, concluding that WPCA supports opting-out of the legislative changes.

113

114 LUA Conroy specified the major differences between Salisbury's regulations and new legislation

115 1: The town of Salisbury requires a special permit for detached unit.

116 2: The town of Salisbury allows for up to 2000 ft.<sup>2</sup> whereas the new legislation has a cut off at  
117 1000 ft.<sup>2</sup>

118 3: The Town allows nonconforming structures to be converted or adaptively reused subject to  
119 the requirement of a special permit. This enables the Commission to review the dimensions,  
120 landscaping and architectural compatibility.

121 4: An exterior door for the accessory unit is not required in the new legislation, apart from local  
122 building and fire codes. The Town of Salisbury has requirements for the units' own access to the  
123 parking area. She suggested this could be removed from the Town's requirements.

124 5: The legislative changes to parking requirements are in alignment with the Town's. Salisbury  
125 requires one additional parking space for these units, thus the current regulations are  
126 compliant with the new legislation.

127 6: Salisbury does not currently regulate short term rentals however the legislation enables  
128 municipalities to limit the use of accessory apartments as short-term rentals.

129

130 Chairman Klemens offered his opinion that the proposed regulations are aimed at community's  
131 that use zoning as a mechanism to exclude affordable and/or multifamily housing in an effort to

132 maintain their exclusivity. He believes that Salisbury has done well to promote affordable  
133 housing through regulations and incentives. Most of the accessory structures being developed  
134 do not meet the definition of affordability but the option is there. Additionally, the special  
135 permit process facilitates public input. The legislation eliminates and opportunity for public  
136 engagement and removes some of the control the Commission and town have over these high-  
137 end accessory units. At this time Chairman Klemens asked the other members for their  
138 opinions.

139  
140 Alternate Schiffer questioned whether this special permit process is working for our  
141 community. She specifically mentioned that the document states little to none of the  
142 development in Salisbury qualifies as providing a diversity of housing or affordable housing and  
143 questioned if we have met these requirements.

144  
145 Chairman Klemens acknowledged that most of the units being built do not qualify as providing  
146 a diversity of housing or affordable housing. But added it is not a direct failure of the Town  
147 rather a reflection of the community. He asserted that if the Town does not opt-out, we would  
148 allow development with fewer restrictions than we presently have. Chairman Klemens  
149 emphasized that it is not the intent of the legislation or of the Planning & Zoning Commission to  
150 promote luxury accessory structures. He also feels that it is of the utmost importance to  
151 maintain local control.

152  
153 Alternate Schiffer stressed the need to promote housing diversity and that she would support  
154 opting-out, but maintained that work needs to be done to promote housing diversity.

155  
156 Commissioner Cockerline echoed that he believes based on the Plan of Conservation and  
157 Development (POCD), recently adopted regulations, and approved projects the Commission is  
158 generally in favor of affordable housing. He agreed with the previous comments that most of  
159 the units constructed under the accessory apartment regulations do not contribute to housing  
160 diversity but he is in favor of opting-out.

161  
162 Commissioner Whalen further pointed out that if we choose to opt-in, we lose the right to  
163 adjust the regulations. Chairman Klemens expressed if we opt-in we would give up local control  
164 of the special permit process.

165  
166 LUA Conroy explained that other communities require twice as much lot area, or have  
167 restrictive floor area ratios which penalize people with smaller homes. Adding that Salisbury's  
168 existing regulations are progressive in facilitating various opportunities although attached units  
169 are not constructed as much as the Commission might like even though a site plan approval (as  
170 of right) is all that is required.

171  
172 Commissioner Cockerline inquired if we choose to opt out will the Town of Salisbury in anyway  
173 be penalized or lose funding from the State or the US Department of Housing? Chairman  
174 Klemens replied that no funding repercussions would result from opting out. He added that the

175 Town of Salisbury’s regulations surpass many other towns and asked to hear from the rest of  
176 the Commission before continuing with public comment.

177  
178 Commissioner Riva noted that the Commission tries to provide equal opportunities for all and  
179 the system that is in place works well and he does not see a need to change the existing  
180 regulations.

181  
182 Alternate Allee is in favor of opting-out. She considers the Town to be forward thinking in this  
183 area adding she feels that opting-in would be a step backwards.

184  
185 Alternate Higgins agreed opting-out is correct, but also mentioned the statement of “addition  
186 of an accessory unit by right” is interesting wording. Perhaps the reason why affordable and  
187 workforce housing is not done as much is because it is not currently as of right.

188  
189 LUA Conroy clarified that Site Plan approval is “as of right”

190  
191 It was explained by Chairman Klemens and LUA Conroy that if we do not opt-out, we will  
192 automatically opt-in. When the Commission comes to its conclusion, the next step is to advise  
193 the selectmen at which time a town meeting will be held to declare a public position.

194  
195 Chairman Klemens asked members of the public to use the raise hand function if they want to  
196 speak.

197  
198 Pat Hackett finds the peculiarities of local zoning challenging to traverse in contrast to building  
199 codes which are more standard, having one set of codes and one set of rules to follow.  
200 Regarding the special permit process, it displays a local essence and he believes these local  
201 rules are best written into the proposed regulations, not discretionarily applied on a base by  
202 case basis.

203  
204 Mr. Hackett recognized the Commission’s efforts to facilitate affordable housing through  
205 changes to regulations but expressed concern over the complexity of calculations which he  
206 does not believe to be as beneficial as the Commission thought they could be. He also  
207 acknowledged the lack of affordable development being done here, giving examples of the  
208 economics of our housing market, the increase in population and intensified use of properties.  
209 He posited that creation of any housing unit does not limit its potential for use; affordability  
210 encompasses more than the State’s definition. His opinion is that any type of housing can be a  
211 good thing and the legislation’s requirement “of right” is easier and less expensive for the  
212 creation of these kinds of accessory units.

213  
214 Chairman Klemens explained the special permit process gives an opportunity to abutters to give  
215 input relating to screening and gives the Commission discretion to tailor the development to  
216 the individual circumstances of the site. He further explained that codifying everything in the  
217 regulations would make the process more difficult. Chairman Klemens stated that the

218 Commission's goal, is to provide balance between the needs of the applicant and the  
219 community and he does not feel this can always be written into the regulations.  
220  
221 Mr. Hackett expressed he agreed that many individual circumstances could not be written into  
222 regulations but queried how an accessory structure might warrant different requirements from  
223 the primary structure, provided all setbacks are met. That should eliminate the need for  
224 screenings.  
225  
226 Chairman Klemens explained that each situation is different, and the special permit process  
227 allows input from the community and neighbors. If the Commission doesn't opt-out  
228 development could be done as of right without feedback.  
229  
230 Mr. Hackett voiced the role of the Commission is to look out for the community and if the  
231 regulations reflect that, there should be no need for input from neighbors.  
232  
233 Chairman Klemens clarified the Commission is entrusted to run a fair and legitimate process  
234 giving everyone the chance to be heard whether it is thought to be legitimate or not and he  
235 does not want to make the process any less inclusive.  
236  
237 Mr. Hackett agreed with the Chairman on inclusivity, but emphasized that there can be cases  
238 when the special permit process is still subjective when all regulations appear to have been  
239 met.  
240  
241 Commissioner Whalen expressed that the purpose of a special permit process is to allow an  
242 opportunity to be heard. Just because one thinks an action is not detrimental does not mean all  
243 agree, this gives everyone the chance to express their concerns.  
244  
245 Commissioner Cockerline acknowledged Mr. Hackett's point of view but expressed his support  
246 for opting-out. He thinks that the issue of site plan vs. special permit will keep coming up and it  
247 should be an ongoing discussion.  
248  
249 Chairman Klemens recognized Bruce Palmer. Mr. Palmer questioned how much progress the  
250 town of Salisbury has made with affordable housing. The State statute 8-30G was established  
251 in the 1980's because some municipalities were deemed to be exclusive. With all the recourses  
252 available in Connecticut why was this done in this fashion? Affordable housing in Salisbury is a  
253 complicated issue and the impediments to developing more diverse housing warrants further  
254 examination.  
255  
256 Chairman Klemens explained that 8-30G was developed in hopes of promoting affordable  
257 housing in affluent, exclusively zoned, residential communities. Ultimately, it has under  
258 produced because there are loop holes. Chairman Klemens asked how opting-in would help  
259 address the affordable housing issue in Salisbury and who benefits from the new legislation? He  
260 believes that opting-in will make it easier for people with means to do what they want with less  
261 control.

262 Mr. Palmer offered that Salisbury is the 3<sup>rd</sup> or 4<sup>th</sup> least affordable place to live in Connecticut.  
263 He recognized that areas zoned for multifamily and affordable housing are already developed.  
264 He suggested looking into more creative ways for integrating affordable housing into  
265 nontraditional zones proclaiming that it is a great task to balance.  
266

267 Chairman Klemens expressed that the real estate market and sky rocking cost of housing in  
268 Salisbury challenge the creation of new affordable housing  
269

270 Alternate Schiffer agreed that the reasons to opt-out are compelling, but queried if there are  
271 any positive benefits to opting-in.  
272

273 Chairman Klemens conveyed that he did not feel there were any benefits to opting-in. He  
274 anticipates a loss of control over luxury accessory dwelling units and foresees no impediments  
275 to affordable housing development in Salisbury by opting-out. He fully supports a decision to  
276 opt-out.  
277

278 Mark Capecelatro was recognized to speak. He added that he preferred opting-out as the  
279 special permit process allows for a balance between stakeholders and does not affect property  
280 values. In his opinion favoring local regulations and local control is superior to State legislation.  
281 He supports opting-out.  
282

283 Commissioner Whalen emphasized that construction prices are so high that it does not seem  
284 feasible to have an affordable rent without subsidy. Even a new 800-900 square foot accessory  
285 apartment would be costly. He inquired when this legislation was adopted.  
286

287 Chairman Klemens added that the only way to promote affordable housing is to give incentives  
288 to developers for mixed income development. He agreed with Commissioner Whalen adding it  
289 is a challenge not only because of property values but also the cost of materials. He specified  
290 the legislation was adopted in 2021. Chairman Klemens expressed that Salisbury can do a  
291 better job with these issues than the State Legislature.  
292

293 *Motion:* to close the public hearing  
294 Made by Cockerline, seconded by Whalen  
295 Vote: 5-0-0.  
296

297 It was discussed by the Commission that if Salisbury does not update the regulations by January  
298 1, 2022, there would be an automatic opt-in.  
299

300 *Motion:* to recommend that the selectmen opt-out of the accessory apartment legislation  
301 Made by Cockerline, seconded by Riva  
302 Vote: 5-0-0.  
303

### 304 **Other Business**

305

306 4. Minutes of August 16, 2021

307

308 Chairman Klemens noted two corrections on line 109 and line 174. On line 109 the space \_  
309 inserted between shared and access and line 174 the name is Charles **Mallory** not **Malloy**.  
310 At this time, he asked the committee if any others had corrections. Alternate Higgins added on  
311 line 250 the word **should be** inserted to read **it was explained**.

312

313 *Motion:* To approve the minutes as amended.

314 Made by Cockerline, seconded by Whalen.

315 Vote: 5-0-0.

316

317 5. Minutes of August 30, 2021

318

319 Chairman Klemens noted the dialogue about meeting rooms should be inserted on line 62. He  
320 recommended adding, **there ensued a discussion concerning location of in-person meetings in**  
321 **the Salisbury Town Hall**.

322

323 Alternate Higgins advised on line 68 replacing **the** with **Town of Salisbury**. And line 75 adding the  
324 word **public** to read **public hearing**.

325

326 *Motion:* To approve the minutes as amended.

327 Made by Cockerline, seconded by Riva.

328 Vote: 5-0-0.

329

330 6. Outdoor Dining Legislative Changes Discussion

331

332 Chairmen Klemens explained the new legislation related to outdoor dining. The legislation  
333 makes outdoor dining *as of right*, but the Commission can set limitations and controls in our  
334 regulations. He emphasized that there is no opt-out clause. Legislators are encouraging outdoor  
335 dining in the wake of the COVID pandemic.

336

337 LUA Conroy further explained that the existing regulations do not clearly permit outdoor dining  
338 as an accessory use, but there may be preexisting conditions or Executive Orders that allow for  
339 it.

340

341 Chairman Klemens referred to the now closed Country Bistro which had patio dining.

342 Commissioner Cockerline added that they had an issue involving the number of seats and  
343 available parking spaces. Ultimately, they removed some of the outdoor seating.

344

345 Chairman Klemens queried the Commission as to what controls they would like to put in place?

346

347 LUA Conroy explained the legislation allows for outdoor dining as a *principle* or *accessory use*  
348 adding there is some conflict if the Commission feels it should be *principle* and not just  
349 *accessory* to a restaurant we will need to revisit and redefine definitions in regulations.

350 Chairman Klemens added it would relate to walkup establishments, but food trucks are an  
351 entirely different issue.

352  
353 LUA Conroy explained that Executive Order allowing outdoor dining expires on March 31, 2022,  
354 and the new legislation takes effect on April 1, 2022, from there it will become *as of right* if we  
355 do not adopt new regulations. The Commission cannot opt-out and must request either a  
356 special permit or site plan for approval.

357  
358 The Commission had an extended discussion on the topic of outdoor dining and desired  
359 parameters for the community. The Commission provided guidance for LUA Conroy and  
360 Chairman Klemens to generate draft regulations.

361  
362 **Summary** – The Commission agreed:

- 363 • to classify outdoor dining as an accessory use.
- 364
- 365 • that the area used for outside dining should not be greater than the interior dining  
366 space. On a sidenote interior space should be examined differently i.e., it does not make sense  
367 to base parking needs on gross floor space which includes storage and kitchens. It was also  
368 suggested to investigate how the fire marshal defines capacity limits.
- 369
- 370 • no amplified music in outdoor areas.
- 371
- 372 • no outdoor dining should inhibit ADA accessibility and standards.
- 373
- 374 • if using or encroaching on municipal land, a license or a permit will be required. It was  
375 also suggested to ask the selectmen for their opinion. If they do not feel that municipal  
376 property should be used for private gain, it could be prohibited.
- 377
- 378 • lighting/illumination regulations should include downward facing lights and should  
379 prohibit lights directed off property or at neighbors.
- 380
- 381 • on keeping and maintaining cleanliness of the area and all trash should be removed  
382 daily. If this is not obeyed a cease and desist could be issued.
- 383
- 384 • a site plan review would be needed to obtain a permit for outdoor dining as an  
385 accessory use. (Will be revisited for specifics)

386  
387 LUA Conroy further added that every establishment that has utilized outside dining from the  
388 Executive Order due to the Covid pandemic will have to obtain a permit by April 1, 2022, with a  
389 site plan review.

390  
391 7. Regulation Clarification 301, 302, 303

392

393 LUA Conroy described the adjustments pertaining to sections **301** Exceptions to Minimum Lot  
394 Area in RR-1, RR-1-V & LA Zones, **302** Minimal Buildable Area in RR-1, RR-1V, RR-3, MR, RE and  
395 LA Zones and **303** Minimum Square of the regulations. She specified they are the minimum  
396 requirement for lots. The concepts of minimum lot area, minimal buildable area, and minimum  
397 square are defined in the regulations but they are contradictory. She added the buildable area  
398 cannot contain wetlands soils water courses, utility, conservation and access easements or  
399 rights away. However, this doesn't prohibit areas in required setbacks so it could include the  
400 entire lot even though construction within the setbacks is prohibited.

401  
402 Alternate Allee identified the buildable area is used in order to calculate what can be built  
403 independent of what it is used for. Commissioner Cockerline further explained the intent is for  
404 a minimum of 20,000 ft.<sup>2</sup> buildable. LUA Conroy confirmed it could be more than 20,000 ft.<sup>2</sup>.

405  
406 Chairman Klemens informed explained two concepts to try to solve these issues:  
407 The first is to use *minimum lot area* that does include setbacks but has carveouts allowing one  
408 to calculate all the land that is technically buildable. The second is to use *buildable area* an area  
409 within that respects the setbacks and does not necessarily need to be rectangular.

410  
411 Alternate Higgins asked for clarification that it doesn't need to be on the setback line. Chairman  
412 Klemens responded that is correct in theory it could be behind one setback line.

413  
414 LUA Conroy further explained as of now *minimum square* has two descriptions in the  
415 regulations one in the text defined as one square on the front yard setback line and one in the  
416 definitions that has no reference to be on the setback line. Commissioner Cockerline agreed the  
417 second one was better, and Chairman Klemens offered using buildable area as it respects all  
418 setbacks. The Commission confirmed that the term minimum square should be eliminated from  
419 section 303.

420  
421 Chairman Klemens noted that many lots cannot fit into the minimum square on the front  
422 setback line i.e., you can't put a square inside a triangle. Alternate Higgins added that many  
423 times Mat Kiefer has identified this on his surveys.

424  
425 LUA Conroy acknowledge the need to better tease out the terms minimum lot area and  
426 buildable area. Chairman Klemens explained when talking about minimum lot area  
427 unencumbered by what we now call buildable area in addition to the setbacks and then  
428 telescope down to buildable area that respects the setbacks in any shape.

429  
430 The 20,000 square-foot designation in LA zones was also questioned. Should it be eliminated  
431 altogether? They are much smaller lot sizes (less than half an acre) and was determined this  
432 may have been because of water and sewer in those zones.

433  
434 Chairman Klemens asked LUA Conroy to continue work on modifying the regulations and the  
435 Commission can tentatively review on the 26th of October (10/26/2021). He added that  
436 alterations to the regulations will be shown to the Commission before being passed on to the

437 town of Salisbury attorney and then onto the Council of Government (COG) and then to public  
438 hearing before changes are made permanent.

439

440 **Adjournment**

441

442 Chairman Klemens requested a motion to adjourn.

443

444 *Motion:* To adjourn the meeting at 9:09PM.

445 Made by Whalen, seconded by Cockerline.

446 Vote: 5-0-0.

447

448 Respectfully Submitted,

449

450

451

452 Alison Forman,

453 Land Use Assistant