

**SALISBURY PLANNING AND ZONING COMMISSION
SPECIAL MEETING MINUTES
APRIL 14, 2021 5:30 PM**

Remote Meeting by Live Internet Video Stream and Telephone

Members Present

Dr. Michael Klemens (Chairman)
Debra Allee (Alternate)
Dr. Danella Schiffer (Alternate)
Bob Riva (Regular Member)
Martin Whalen (Secretary)
Cathy Shyer (Regular Member)
Jon Higgins (Alternate)

Member Absent:

Allen Cockerline (Regular Member)

Staff Present:

Abby Conroy, Land Use Administrator (LUA)
Chuck Andres, Town Counsel

Brief Items and Announcements

ORIGINAL

1. Call to Order/Approval of Agenda
Chairman Klemens called the meeting to order at 5:31 p.m.

2. Seating of Members & Alternates
The Regular Members present were seated. Alternate Jon Higgins was seated for Allen Cockerline.

In response to Ms. Galluzzo's e-mail, Chairman Klemens explained that the chat function was not permissible, and that those who wish to speak must identify themselves as their Zoom screen name is not always correct. He also clarified that if speakers wish to be made visible, they can make that request.

Public Hearing

3. #2021-0123 / Salisbury Housing Committee / 11 Holley Street / Special Permit to Construct 12-Unit Multifamily Dwelling in the PKSQ District and Aquifer Protection Area (Section 403 & 405) / Map 45 / Lot 2 / DOR: 02/08/2021

LUA Conroy reviewed the list of documents received and posted on the Town's website with regard to this continued hearing.

Chairman Klemens began the discussion asking the applicant whether there are feasible and prudent alternatives on abutting town owned sites as claimed by the intervenor. Attorney Smith responded that there are not. Chairman Klemens asked that the applicant discuss any measures relating to the historic feature of the site be discussed. Chairman Klemens asked that Attorney Casagrande discuss the unreasonable impairment of historic resources that is directly relevant to the specifics of the intervention.

The floor was opened to the Intervenor, Attorney Casagrande and his team to make their presentation: Attorney Casagrande objected to Chairman Klemens' request to discuss specifics relevant to the intervention as his clients are also abutters and have every right to discuss all matters and not only the

intervention matter. Chairman Klemens clarified that he is asking for help with focusing the Commission and public on matters in support of the intervention.

Attorney Casagrande discussed Connecticut General Statutes Section 8-13 regarding Incentive Housing Zones and questioned whether the application violates the Statute as the property is an existing park. Mr. Klemens reported that the Town Attorney will opine on that matter.

Rachel Carley, Architectural Historian, reviewed a PowerPoint presentation of the importance of the National Register Historic District. She opined that there is no question that Bicentennial Park is a contributing resource. She expressed that the Town has a remarkably superb architectural heritage and that keeping that specific image was a condition of the gift to the town of this property. She felt that was not what is represented in the renderings. Ms. Carley identified that synthetic material substitutes would not be in keeping with the period and that she felt any project that jeopardizes this park changes the historic relevance to the Town. Ms. Carley confirmed that her report is based on the current application and not one prior.

Brian Miller, Planner came forward to answer questions from the prior meeting. He reported that none of the alternative sites identified by him would result in a displacement of existing historic features. He discussed the POCD and identified goals for the Village Center expressing his opinion that this proposal would have the opposite effect. He stressed that the Town's Affordable Housing Plan offered flexibility to achieve housing goals.

Mr. Virbickas, engineer came forward with responses to questions from the last meeting. He noted the requirement that a PE shall prepare the plans. Contrary to statements by the applicant his calculations of the development yielded a net removal of 380 cubic yards of material. He suggested that these numbers be confirmed by a professional. Additionally, he does not believe that what is being proposed meets "street wall" regulation as intended. He further emphasized concern that vehicles entering into the site may not clear the building overhang as designed.

Attorney Casagrande explained that the existing apartments on adjoining parcels cannot be determined illegal by the Commission; Only the LUA has the authority to determine compliance. He reiterated that most of the surrounding businesses have come to rely on the existing parking lot. He expressed that the proposal would make it so that 24 Millerton Road cannot rely on the terms of their Special Permit including the use of offsite satellite parking located on the subject site. Attorney Casagrande indicated that the deeded easement of 22 Millerton Road gives that owner the right to unobstructed passage offering that, if compromised by a Commission decision, approval could result in the project being tied up in litigation for years. He stated that other sites would not create such an issue, and that the Town has no reasonable expectation to be able destroy a historic park. He suggested that nothing forbids a Commission from consideration of alternate locations. Attorney Casagrande then reported that he confirmed no application has been filed with SHPO as stated by applicant and that this violates their CHFA application.

The floor was opened to questions from the Commission:

Commissioner Shyer asked Ms. Carley if the building would be better without the chimneys. Ms. Carley responded that she was not prepared to answer.

Alternate Higgins asked Ms. Carley about the south view and lighting. Ms. Carley explained that it is the density is a concern from the south view, and noted that there are plenty of alternatives with regard to lighting.

Chairman Klemens discussed the application to CHFA that the intervenor identified as misrepresenting the historic significance of the site. He asked Ms. Carley about the wall, green and park and whether one was more significant than another. She discussed the history of the site and that the wall is an integral part of the design of a parking park. She stated that it is important to preserve. Chairman Klemens asked about alternative proposals on the site. Ms. Carley explained that each proposal for the site would have to be considered on a case-by-case basis and expressed that she felt this plan is not complementary to the colonial federal heritage due to its bulk, size and materials.

Alternate Allee asked if the building, as proposed, would impact the character of the district. Carley explained that it is her opinion that it would impact the district. Chairman Klemens asked if the intervention would be regarding the district as a whole or the site. Ms. Carley advised it would be both then explained for Higgins that the historic resource is a contributing piece of open space.

Chairman Klemens questioned Attorney Casagrande regarding how this project would affect the easement of RJS Holding. Attorney Casagrande explained that if the Commission limits the right to pass and repass then this would affect the easement rights.

The floor was opened to the applicant:

Attorney Smith came forward with Jocelyn Ayer and reviewed the new information submitted in a PowerPoint presentation. Mr. Tunsky reviewed the submitted stormwater management report. He reported that the Class D soils result in a low impact with a slight increase in runoff and expressed that there will be no adverse impact to the Aquifer. In response to concerns raised by R. Carly he explained that the proposed development did not include exposed concrete and that plantings would be added along the southern line as a buffer. He identified that the two proposed lighting fixtures are full cut off in accordance with Zoning Regulations.

Chairman Klemens asked if an access hazard would be created as reported by Mr. Virbickas' report. Mr. Petitto responded that box trucks should not be under the building, emphasizing that the proposed building included other points of access that would accommodate such vehicles other than the areas of concern noted by Virbickas.

Chairman Klemens asked Mr. McCoy how parcel could be designated as a park when it was gifted as a building lot. Mr. McCoy explained that this is not a conflict. It merely needs to be reviewed by SHPO. Klemens asked about the allegations by the intervenor regarding SHPO. Mr. McCoy explained that SHPO cannot accept the form until the funding source has been verified. He told the Commission that

SHPO initially offered guidance; however, due to the public interest in the project they decided to hold off on further review until the form was submitted.

Attorney Smith interjected that it would be inappropriate to consider the motive and legality of the CHFA forms as part of this process. Assuring the Commission that in response to the intervenor's allegations about the submitted information he would follow up with the appropriate people.

Alternate Allee asked about the proposal of the concrete walls being faced with the stones from the site. Attorney Smith stated that the applicant would have no objection to this as a condition of approval.

Commissioner Shyer asked about the location of the historic wall in question. The site plan was reviewed and it was explained that the proposal is to reuse the stone to face the new walls. She asked about a loading zone for deliveries. Attorney Smith explained that is something they could inquire with DOT about.

Commissioner Riva asked about possible resolutions to the building overhang concern. It was reported that the projection is 5 feet. There can be no obstructions in the isle space; therefore, traffic pattern and sidewalk adjustments cannot be made.

Attorney Casagrande asked for Mr. Tunsky's opinion regarding Ms. Carley's testimony. He reported that he does not dispute her assessment of historic significance. Mr. Tunsky disagreed with Attorney Casagrande with regard to the proposed reduced setback on Holley Street and asserted that the front yard would be measured between the principal building and the front lot line. This design matches the setback of a portion of the existing building on 7 Holley.

Attorney Grickis asked the Commission to state for the record that there is no conflict of interest among their members. Chairman Klemens reminded Attorney Grickis that this was done at the first meeting when the hearing was initially opened. Attorney Grickis asked the Commission to refute or acknowledge claims regarding satellite parking. Chairman Klemens explained that all of this would be done during deliberations. Attorney Grickis discussed the aquifer protection notification. Klemens advised that Attorney Smith will address this in his closing statements.

Attorney Grickis asked about the SHPO application and who has jurisdiction. Mr. McCoy reported that Federal and State funding relies on SHPO review. Attorney Grickis noted that he feels safety is being overlooked during this application. Chairman Klemens advised that safety will also be a part of deliberations. Attorney Grickis expressed that he felt there should be a transcript for an issue this important. Attorney Andres advised a transcript is not done unless there is an appeal. Attorney Grickis closed, stating that this is simply the wrong site for affordable housing.

Maurice Stucke stated that the Housing Committee misrepresented this site as a vacant site in their CHFA application and asked why. Mr. McCoy reported that he had no involvement in filing the application and was unable to answer.

George Massey noted the wall was rebuilt several times and finds the interest in historic significance curious. He noted that the Commission may approve fewer than the required spaces per the Regulations. There will continue to be adjacent parking ensuring that the nonconformity of neighboring uses would not increase.

Barbara Douglas would like to see the Commission do a study of parking spaces including recovery of spaces and hierarchy of spaces. She discussed safety concerns. She spoke about the financial difficulties of nonprofits and funding but asked that these not be factored into the Commission's decision.

David Valcin, Chair of BOE, discussed the number of teachers employed who find it very difficult to become part of the community. Affordable housing in this town is essential to creating a vital pool of employees. Additionally, as a parent, his family uses the Town Grove and does not find it to be a safety concern.

Hobby Van Deusen noted concerns with box trucks unloading and safety. He reported on a snowy day accident he knew about. He feels this project will be putting people in peril.

Bruce Palmer asked about the time capsule. Chairman Klemens asked for a response reporting on the location of the time capsule.

Barbara Douglas suggested site walks demonstrating lighting.

Susan Galluzo asked Mr. Petitto the height of McDonald's drive through which he had previously referenced. Mr. Petitto expressed he did not know the exact dimensions but was using it as an example.

Member Shyer asked about the RJS right of way identified by Attorney Casagrande. Mr. McCoy confirmed that it does not continue along the south side of the property. Shyer asked how long it would take for this project to complete from the start of construction. Mr. Petitto advised it would take between 12-18 months to complete.

Commissioner Shyer asked who would respond to concerns with the property once occupied. Ms. Ayer reported that there would be a property manager that would be available to address concerns.

Chairman Klemens noted his concerns with trucks parking on the main road. He would like parking for deliveries be clarified in the closing statement.

The Commissioners were poled as to whether they are prepared to close the hearing. It was determined that the Commission was ready to hear closing statements.

Attorney Casagrande stated that the construction of this project would be a tragedy. The destruction of Bicentennial Park will impair this historical resource. There are alternate sites identified in the Town's Affordable Housing Plan. There are a lot of unanswered questions specifically regarding an unloading area. He asked that the record from the previous hearings become part of this record

specifically noting the discussions regarding safety concerns. The testimony by business owners that the loss of the parking spaces will jeopardize the viability of their businesses. His clients are not opposed to affordable housing, but it should not at the expense of historical resources and not at the risk of viability of businesses. They merely ask that alternate sites be explored and respectfully ask that this application be denied.

LUA Conroy reported that communication was received regarding DPH which will be uploaded to the website. The group discussed including the record from the prior hearing. Attorney Smith objected to the request at this point in the hearing. It was confirmed that the traffic reports are included in this record.

Chairman Klemens asked why there was no consideration regarding the loading area on Holly Street.

Attorney Smith was given the floor for the applicant's rebuttal. Mr. Petitto explained that the front of the building was designed for public access. He noted that all the businesses have deliveries from Millerton Road. He pointed out that delivery trucks can use the pull off on Holly Street or pull around back of the building to park. There is a 9-foot clearance under the building which is high enough for typical emergency vehicles. He confirmed that the Fire Marshal will review all the plans. Attorney Smith reported that the Fire Marshal opined that the preliminary design is in compliance with fire and building codes.

Mr. McCoy responded to Ms. Carley's report. He clarified that the park is a contributing feature to a historical resource in reference to SHPO's review, and he discussed the implication of what a federal style building is. They are not designing a replica building just building in the federal style. He feels that Carley's images give a false impression of the bulk of the building because they are not three dimensional. Other buildings in the area are not incredibly different than what was designed for this proposal. What is being proposed is comparable to the district. There is no criteria for historic regulation in the area. There is no impairment or destruction to the neighborhood or resources. The proposed building is smaller and shorter than the building that was previously there. The building complies with the Salisbury Zoning Regulations.

Mr. Tunsy and Mr. Petitto confirmed for Attorney Smith that the proposal complies with the Zoning Regulations and no unreasonable destruction or impairment to natural resources will result from this proposal.

Attorney Smith advised there is no local regulatory authority for historic review of this proposal and that the historic district commission did not include this property within the district. He explained to the Commission that it is the burden of the intervenor to prove that the project will result in unreasonable pollution, destruction or impairment by identifying and quantifying the harm. Unless this is proven, feasible and prudent alternatives should not be considered. He reiterated that Ms. Carley testified that this property could be built upon. The Commission has no authority to deny build-ability on this property. The intervenors have not met their burden of proof.

Attorney Smith further reiterated that the approval of this property will not increase valid nonconformities. When one person has a nonconformity, it does not give them authority to deny other property owners their rights. One property owner cannot bind another to parking just by showing it on the map. This requires something in writing by the owner for the agreement of satellite parking. The Commission cannot encumber this property with satellite parking by approving a special permit. Additionally, this satellite parking is not needed as there is plenty of on-street parking that will accommodate uses in the area.

Attorney Smith explained that striping a fire lane does not result in encroachment on any easement. There are no proposed encroachments that will impede any of the rights of way. Regardless, this matter is a quiet title action and not for P&Z to consider.

Attorney Smith reviewed the gift agreement regarding this property noting that, as required, the federal design is being presented in this proposal. He went on to assert that the intervenors did not sustain their burden of proof and there is no need to go to a feasible and prudent alternative. The application complies with criteria for the special permit application.

Chairman Klemens asked if, by nature, historic matters are more subjective than a natural resource. Attorney Smith discussed caselaw showing that interventions on the basis of historic features is a difficult burden to sustain yet, it is still a burden that must be proven by using expert testimony.

Ms. Ayer reviewed the plan and areas of concern noting that they have listened to the public and accommodated their concerns. This project can provide the affordable housing that Salisbury desperately needs while still providing parking to businesses. Additionally, the historic resources of the wall will be incorporated into the building as well as a small park. She explained that every site will have challenges, but this is the site they are proposing currently. The time capsule can obviously be relocated back into the wall. They feel they have met all of the regulation requirements.

Motion: To close the public hearing at 10:04 p.m.
Made by Shyer, seconded by Riva.
Vote: 5-0-0 in favor.

Deliberations will be on April 28, 2021 at a public meeting at 5:30 p.m.

Adjournment

Motion: To adjourn the meeting at 10:11 p.m.
Made by Whalen, seconded by Shyer.
Vote: 5-0-0 in favor.

Respectfully submitted,

Tai Kern,
Recording Secretary

Salisbury Planning & Zoning Commission Minutes
04/14/2021