

**SALISBURY PLANNING AND ZONING COMMISSION
SPECIAL MEETING MINUTES
APRIL 28, 2021 5:30 PM**

Remote Meeting by Live Internet Video Stream and Telephone

Members Present

Dr. Michael Klemens (Chairman)
Allen Cockerline (Regular Member)
Dr. Danella Schiffer (Alternate)
Bob Riva (Regular Member)
Martin Whalen (Secretary)
Cathy Shyer (Regular Member) – Arrived 5:32
Jon Higgins (Alternate)
Debra Allee (Alternate) – Arrived as an attendee 5:35

Staff Present:

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

Brief Items and Announcements

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, alternates were moved down to “attendee” status to prevent influence on deliberations.

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 / *Deliberations*

Town Counsel, Attorney Charles Andres began the discussion by addressing communications received after the public hearing from Intervenor, Attorney Casagrande. The inquiry from Attorney Casagrande specifically requested copies of potential ex-parte communications received by Commission Members from Mary Close Oppenheimer. Staff investigated the potential concerns and responded to the Intervenor accordingly. The seated members were queried about ex-parte communications and made statements to their ability to act on the application with an open mind.

Chairman Klemens then read his personal reaction and analysis of the Intervenor’s presentation concluding that the intervenor had not met their burden.

Attorney Andres, followed up the Chairman’s analysis by clarifying the burden of an Intervenor and the subsequent analysis of prudent and feasible alternative should the rest of the Commission find that the Intervenor’s burden has been met.

Opinions regarding the intervention were sought from the remaining Commissioners. The members agreed that they did not believe the Intervenor successfully demonstrated that the proposed multifamily housing project involves conduct that is reasonably likely to have the effect of unreasonably impairing or destroying

the public trust in the resources of the State, specifically the historical character of the Lakeville Historic District

Attorney Andres outlined the standards that the Commission should consider when evaluating the application under both the Aquifer Protection Area Overlay District (AP) and under the Pocketknife Square Overlay District (PKSQ) including the general criteria for a special permit and compatibility with the neighborhood.

Chairman Klemens asked Attorney Andres and the Commission for opinions related to two arguments made against the development. The first was an objection that the proposed development exceeded densities allowed under the PKSQ regulations. The second was related to the discretionary nature of many of the special permit criteria and an allegation by the Intervenor that the application does not meet the Regulations, it must be denied.

Attorney Andres explained that a Special Permit is essentially an administrative approval however, the criteria themselves are general and somewhat subjective. The Chairman concurred expressing that he felt the Commission had great latitude in the Special Permit.

The Commission and LUA Conroy discussed the allegation that the proposal exceeds the allowed density, concluding that density proposed was permissible because the units were affordable.

The Commission discussed the reduced setback and street walls on Millerton Road and Holley Street. The consensus was that the proposed setback on Millerton Road was compliant but that the Holley Street setback required further deliberation. Commissioner Cockerline felt that the Lakeville Interiors building defined the street wall on Holley Street on the basis that though only a portion of that building was within the required front yard setback, it was sufficient to make the building nonconforming. Thus, it could be used to establish a street wall.

Chairman Klemens queried whether the proposal was consequentially too far offset from Holley Street. He was also concerned that a street wall could not exist because the parking lot and a portion of the Lakeville Interiors building was set too far back. Attorney Andres interjected explaining that the Regulations require that the proposed building meet the setback of only one building on abutting properties to 'maintain' the existing street wall. He further explained that the Regulations define setbacks as minimums not maximums. Commissioners Riva, Shyer, and Whalen weighed in concluding that the proposal meets the Regulations with regard to setback.

The discussion moved to the overhang on the south side of the building. Submissions by the Intervenor's engineer were reviewed and concerns were distilled. The Commission established, based on testimony heard from emergency personnel during the hearing, that the right of way to the west of the building was not going to be used. The idea of bollards to prevent vehicle collisions with the building was deliberated and structural changes to the building discussed. It was concluded that a bollard would be the preferred method.

Commissioner Shyer expressed concerns over access by delivery vehicles positing that they are a more likely matter of concern. Commissioner Riva added that delivery people would be able to access the site, parking or loading either from Holley Street or the parking lot, not via Millerton Road.

Commissioner Shyer then inquired about the construction materials on the southern side of the building specifically, in the garage area and containment for refuse. Commissioner Cockerline felt refuse was a management issue, outside the purview of the Commission. Members agreed that the refuse area should be contained to prevent access by wildlife but should also be sufficiently ventilated.

The Chairman moved on to the Aquifer Protection Area Overlay District Regulations expressing that he felt the applicant had ultimately provided the information required. The possibility of a condition preventing the storage of hazardous materials in the parking area was discussed.

The height of the chimneys was questioned, as some members felt they were excessive. It was established that the chimneys should be made smaller if feasible and compatible with building codes.

Commissioner Shyer emphasized her concern over the appearance of the southern face of the building, particularly the massing and materials. Potential garage doors and curated lighting were discussed. The Commission agreed that garage doors would not be beneficial. Stone cladding on the exposed foundation would help reduce the modern appearance of concrete.

The Commission discussed the size and massing of the building and it was concluded that conditions to deal with architecture and appearance were viable but that structural and bulk requirements such as removing the third floor would be significant ultimately rendering the development unviable.

There was an extensive discussion of the visual impact of true divided light windows and whether they might be required as a condition of approval.

Attorney Andres explained the implications of conditions of approval and whether the Commission had authority to require that the applicant return with updated plans outside of the hearing. He identified three options for the Commission including a motion to approve the plan as-is with conditions of recommended changes; approval with required changes to be made and if the applicant is unable to meet the requirements, they can seek a modification of the permit; and require as a condition of approval that the applicant return to the Commission with an updated plan and the Commission can hold a hearing on that. The Chairman was alarmed by the possibility of additional hearings, citing future interventions, and filibuster delays expressing that he did not want to have to begin the process all over.

After further deliberation about the windows the discussion moved on to window treatments, lighting, planting and stone. The Commission agreed that white window treatments should be used to ensure a uniform appearance from the street, exterior lighting should be dark sky compliant and period specific, the planting plan though limited was sufficient, and that a stone face on exposed cement was essential.

The Commission disagreed with claims that the proposal would be detrimental to nearby businesses on the basis of parking deficiency and unsafe due to traffic but felt that both issues needed to be addressed by the Town on a global basis.

Loading and unloading was discussed and the Commission felt that that should only take place on Holley Street or within the parking lot, not on Millerton Road with the exception of school busses.

The location and limits of the right of way for the adjoining parcel were located. A 'private property, no through-traffic' sign was proposed. It was established that any signage, or access would be under the purview of the owner not the applicant.

Chairman Klemens expressed that he was satisfied with responses by the Fire Marshal and a volunteer firefighter to issues raised regarding fire safety. The Commission established that fire lane striping on the right of way served the purpose of deterring parking and obstruction of passage granted by deed.

It was identified that emergency personnel had expressed concern regarding access within the building the Commission established that as a condition the elevator should be designed to accommodate a stretcher and EMT personnel.

The Commission agreed that fiscal considerations were not germane to their deliberations and that prudent and feasible alternatives need not be considered. However, they established that other required approvals such a SHPO would be required prior to issuance of a zoning/building permit.

The statement on the CHFA application regarding the property status 'not' in a historic district was identified as incorrect but not under the authority of the Commission.

The matter of earth removal associated with the application was determined to be permissible under the regulations regardless of the conflicting volume calculations presented by the applicant and Intervenor.

In conclusion a consensus was reached that conditions should be requirements and the applicant should return with a request for modification if the requirements are not attainable. After reviewing the drawings of the structure, the Commission determined that the building should appear in color as depicted in the renderings, grey with white trim.

It was requested that LUA Conroy, Attorney Andres, and Chairman Klemens develop a draft resolution for the next regular meeting on May 17, 2021. Attorney Andres reminded everyone that ex-parte communications should not take place on the pending matter.

Adjournment

Motion: To adjourn the meeting at 9:02 p.m.

Made by Commissioner Cockerline, seconded by Commissioner Whalen.

Vote: 5-0-0 in favor.

Respectfully submitted,

Abby Conroy,
Land Use Administrator