



TOWN OF SWAMPSCOTT

ZONING BOARD OF APPEALS

ELIHU THOMSON ADMINISTRATION BUILDING
22 MONUMENT AVENUE, SWAMPSCOTT, MA 01907

MEMBERS
MARC KORNITSKY, ESQ., CHAIR
DANIEL DOHERTY, ESQ., VICE CHAIR
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ANTHONY PAPROCKI
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ASSOCIATE MEMBERS
RON LANDEN
HEATHER ROMAN

AUGUST 6, 2019 MEETING MINUTES

Time: 7:05 p.m. – 10:20 p.m.
Location: Swampscott High School, 200 Essex Street, Rm B129
Members Present: Marc Kornitsky (Chair), Daniel Doherty (Vice Chair), Ron Landen, Anthony Paprocki
Members Absent: Brad Croft, Andy Rose, Heather Roman
Others Present: Dorothy Foley (Petitioner), Jocelyn Campbell (Attorney), John Morin (Engineer), Steve Holt (Architect), Ken Shutzer (Attorney), Michael Callahan (Resident), Sara Lee Callahan (Resident), Michael Scott (Attorney), Matt Renninger (Representative – Whole Foods), Rich Toppi (Representative – Whole Foods), Neal Zagarella (Public Speaker), Margaret Ansara (Business Owner), Mark Gibb (Petitioner), Alla Voznyuk (Resident), Susan Gambale (Resident), Marla McDougall (Resident), Nancy Dilisio (Resident), Christine Beane (Resident), Max Kasper (Building Inspector), Molly O'Connell (Planner)

Chairman of the Board, M. Kornitsky called the meeting to order at 7:05 p.m.

MOTION: Chairman Kornitsky to approve the meeting minutes from June 25, 2019. Seconded by R. Landen. Approved 3-0 (with D. Doherty abstaining due to absence).

MOTION: Chairman Kornitsky to continue Petition 19-17, Petition 19-20, and Petition 19-3 to the September 17th meeting. Seconded by R. Landen; unanimously approved.

ZONING RELIEF PETITIONS

PETITION 19-12

2 SMITH LANE

Application by DOROTHY FOLEY seeking dimensional special permit, special permit, and site plan special permit for construction of new single-family home.

M. Kornitsky noted that there are only 4 members present, and so the applicant would need all 4 to vote in favor in order to approve the petition. The hearing will be opened, but the applicant may choose to continue to a later date with a 5-member Board.

Jocelyn Campbell, Petitioner's attorney, introduced herself and disclosed that she is the chairman of the Zoning Board in Nahant. She presented a new set of floor plans and elevations, as well as a list of abutter signatures. She explained that the original request included a 1% overage on lot coverage, however the applicant has recalculated that number as directed by the Planning Board and worked with the Building Inspector to ensure that the right areas were being included/excluded from the calculations. The project is now under lot coverage. The applicant is looking to replace the existing home with a new home approximately the same size on a non-conforming lot. The applicant is a Swampscott

resident and has owned the house since 1966. The new house will not have a basement and will be raised to provide additional sf of floodplain storage, which will ensure that runoff is not adversely impacted. The new design will not be more detrimental to the neighborhood.

Steve Holt, architect, explained the design for the house. The home will be under the height limits in the Zoning Ordinance, even with the floor plate being raised. The planned porches face Puritan Road and look towards the water. They tried to capture the architecture of the Town in order to fit in and enhance the neighborhood. He also showed a footprint comparison of the existing and proposed structures.

R. Landen asked what was the reason for the change in square footage. Mr. Holt responded that they had originally included a deck that was permeable in error. Ms. Campbell also stated the engineer worked with the building department to confirm.

John Morin, engineer, presented on the design and drainage of the new structure. The drainage patterns will not be changed, and the new house will be raised to provide area for flood storage. The only area not raised will be the garage and lap pool, which are included in impervious calculations. Overall, there will be less runoff caused by the new structure and the development should not have a detrimental impact.

M. Kornitsky asked about mechanical equipment. Mr. Morin responded that a/c units and pool equipment will be on a concrete pad on the side of the building.

R. Landen asked if the entire existing basement will be removed. Mr. Morin confirmed that all the concrete will be pulled and the area will be regraded, most likely with crushed stone, and will be a pervious area.

M. Kornitsky opened the public hearing.

Ken Shutzer, attorney for the Callahan's on 10 Smith Lane who are direct abutters, spoke in opposition to the project. The foundation of the new structure is moving 10 feet closer to the Callahan's property. He brought up section 2.3.8.3 of the Zoning By-law, which states that on corner lots, the set-back provisions governing the location of buildings on each of the abutting streets shall apply. The property abuts the A-1 district.

M. Kornitsky asked if Mr. Shutzer was saying that A-1 regulations should apply on this A-4 property, particularly because it is a corner lot. Mr. Shutzer said yes.

The Board debated the intent of this section, and whether it was meant to apply here. Ms. Campbell clarified that the property is listed as A-3 on the record card, although it was rezoned and the dimensional requirements for A-3 and A-4 are the same. Ultimately, members of the Board disagreed with Mr. Shutzer's interpretation of the section. Corner lots do, however, have two front yards.

Mr. Shutzer then pointed to section 2.3.8.5, and stated that their position is that any building built today must be 40 feet away from adjoining two-family or multi-family building. M. Kornitsky pointed out this provision is for multi-family buildings only.

Mr. Shutzer stated that this is the third permutation of this application, and the 2nd page of calculations has been altered three times. The Callahan's have not had the opportunity to review any of the new information. He asked Ms. Campbell if the new house could be moved back to the original footprint in terms of setback on the Callahan side and was advised that was not possible.

M. Kornitsky stated that the project meets the setback requirements. Mr. Shutzer pointed out that those standards are for a conforming lot, whereas this is a non-conforming lot.

Mr. Shutzer expressed concerns about the gross square footage of the building. He also presented a drawing made by Mrs. Callahan of the proposed building over the existing structure. The height and massing would be imposing on their property. Additionally, there is mold on the petitioner's existing structure. They have no issues with the architecture and it is good to have additional drainage, although the two-car garage could be a one-car garage to provide more drainage. But moving the house closer to the Callahan's will have a detrimental effect.

The Board and Mr. Shutzer debated the root of the Callahan's issue, which is the proximity of the building and mass next to the Callahan's smaller house.

Ms. Campbell responded to some of the comments, saying that it wasn't possible to move the house as the neighbors on Puritan also have concerns.

M. Kornitsky asked the applicant to clarify the existing above ground square footage and proposed square footage. The existing structure calculation does not include the basement, and the new uncovered deck space on the proposed structure is 459 sf. Ms. Campbell noted that her client would be amenable to a restriction on the deck area so it would be uncovered in perpetuity.

Mr. Morin addressed the mold comment, stating that normally houses should be at least 15 feet apart to allow light and air to pass through. These will be 17.5 feet apart. Mr. Callahan asked if he had done any sun studies. M. Kornitsky said those are typically for when the Board discusses shade onto a public way or public access area.

Mr. Shutzer reiterated his concern about the gross floor area calculations. The petitioner says they can't move the house, but really they don't wish to, which is different. The structure should be modified and moved away from the Callahan's property.

Mrs. Callahan spoke in opposition to the project. She has concerns about the mechanical equipment being placed in the side yard close to their house and concerns that bringing the house closer will decrease their quality of life and increase the potential for mold. She does not feel involved and that the applicant did not conduct the appropriate outreach.

Ms. Campbell noted that the Callahan's mechanical equipment is also located on the side closest to 2 Smith Lane, and Mr. Morin had checked with the Building Department to confirm that the concrete pad did not have to meet setback requirements.

Mr. Morin confirmed there is some mold on the existing structure at 2 Smith Lane, but there has not been a tenant in the house for months and the house had not been pressure washed in over 20 years.

Ms. Campbell suggested that she could arrange a view of the property for the Board. M. Kornitsky suggested all members of the Board visit on their own time.

David Modica, neighbor at 223 Puritan Road, noted that he had his architect show a rendering of his property in relation to the surrounding properties when he built his current house.

M. Kornitsky suggested that the Board continue this petition to the next meeting and would encourage both sides to discuss and see if a compromise is possible.

R. Landen added that since there has been confusion on the numbers, he would encourage the petitioner to double check all calculations.

K. Shutzer noted he had a conflict on the next meeting date (September 17th). M. Kornitsky replied that this item would be scheduled at a specific time.

MOTION: M. Kornitsky to continue Petition 19-12 to the September 17th meeting. 2nd by R. Landen; unanimously approved.

PETITION 19-17

404 HUMPHREY STREET

Application by RAFFAELE'S HAIR SALON seeking special permit and site plan special permit to replace awning sign.

MOTION: CONTINUED TO September 17th (see above)

PETITION 19-18

1005 PARADISE ROAD

Application by ELIZABETH COHEN – BODY MIND SYSTEM MARTIAL ARTS CENTER seeking a variance for banner signage at the back parking lot on the fence.

The petitioner was present and gave a brief overview of the request. Since the store has no direct frontage on Paradise Road and is located about 750 feet away from the roadway, the banner has been utilized to provide visibility to customers. It is currently in violation of the by-law, as stated in a cease and desist letter sent by the Building Inspector to Marshall's (main tenant), so the request is for a variance to allow the banner to continue at this location. There are virtually no alternatives that provide the same visibility towards the street, as the storefront itself is not oriented in that direction either.

There were no public speakers.

M. Kornitsky asked the Building Inspector about the cease and desist letter. M. Kasper responded that he had sent a letter to Marshall's addressing a number of violations, and the banner was included.

M. Kornitsky asked Ms. Cohen about any alternatives to the banner. She had looked into a sign at a 90-degree angle from the building, but at present it doesn't appear the building could support anything substantial as it is a Styrofoam wall covered by stucco. Also based on the unique shape of the lot, the sign would most likely not stick out enough to be visible. She noted that the banner signage proposed is smaller in sign area than any of the businesses located right on the road, and that it has been essential for her to bring in business. She polled students and 58% said that the banner sign helped them come into the business. She agrees with the complaints about Marshall's in terms of maintenance and cleanliness, and noted that BodyMind Systems cleans and maintains their portion of the lot.

D. Doherty noted that the application probably meets the requirements of a variance but still doesn't like the idea of a banner on the fence. He wishes there was an alternative.

M. Kornitsky noted that the other options seem to be: 1) projection sign, which has complications due to the supporting wall, or 2) pylon sign in front of the fence, which would need permission from the landlord which could also be tricky. He also noted that the relief could be conditioned only for this applicant.

Ms. Cohen also noted that their “open” flag sign was almost not approved by Marshall’s and had a difficult time being installed, as the building wall couldn’t support the weight.

R. Landen questioned whether the Board should condition the application with a sunset provision to provide the petitioner time to find a possible alternative. M. Kornitsky questioned the lease term, and Ms. Cohen responded that the lease renews in January but they need to give 4 months notice.

M. Kornitsky suggested relief with a sunset that would bring the applicant back for review in December 2020. This allows the petitioner to continue with the sign but also to see if there is an alternative that will work for the petitioner and the property owner. The Board will rehear and make a final decision at that time.

D. Doherty agreed and suggested a condition for maintenance.

MOTION: R. Landen to approve Petition 19-18 for relief requested to use a banner sign in the back parking lot, located at 1005 Paradise Road in the location as described with the conditions that: 1) permission will sunset as of December 31, 2020, and 2) the petitioner to keep sign well maintained and in good condition. Seconded by A. Paprocki; unanimously approved.

PETITION 19-19

2 SMITH LANE

Application by JOHN & JENNIFER TRIPP seeking dimensional special permit and special permit (non-conforming) for an addition to the second floor. Addition is a half-story, approximately 240 sf. The Petitioner, John Tripp, gave a brief verbal presentation on the application. It is an existing 2-story dwelling which has non-conforming side and front yard setbacks. None of the non-conformities will be increased as a result of the project.

There were no public speakers.

MOTION: A. Paprocki to approve Petition 19-19 for a dimensional special permit and special permit (non-conforming lot/structure) to permit the addition of a half-story, constructed in accordance with the plans. Seconded by D. Doherty; unanimously approved.

PETITION 19-20

17 CROSMAN AVE

Application by ERIN SINGH & TEGHPAL SINGH seeking dimensional special permit, special permit (non-conforming), and site plan special permit for addition to expand existing kitchen, addition 1st floor family room, expansion of bathroom, addition of back deck, and demolition of existing garage.

MOTION: CONTINUED TO September 17th (see above)

PETITION 19-21

331-335 PARADISE ROAD

Application by WHOLE FOODS MARKET seeking to amend existing special use permit to include the consumption and sales of alcohol and request for a new use special permit for restaurant or coffee shop containing more than 7,500 square feet of gross floor area. Michael Scott, attorney for the petitioner, gave a brief verbal presentation on the project and was joined by two representatives from Whole Foods – Matt Renninger and Rich Toppi. Whole Foods is seeking to implement a program called Sip & Shop, which has been in operation at other Whole Foods in the US. The program allows customers to buy glasses of wine and beer inside Whole Foods, either to sit down in the café or to shop with. The goal is to create an interesting shopping environment and they often feature local breweries and wineries. They have not experienced any adverse impacts from other operations and nothing else about the store is intended to change. Whole Foods has an existing prepared foods section and Common Vic license for the existing seating.

M. Kornitsky asked if they would be selling beer and wine by bottle or case; Mr. Scott replied it would be just by the glass. The concept is similar to Eataly, where customers can grab a glass of wine while shopping, although the back section of Eataly does have a Section 15 license for a package store.

M. Kornitsky noted the comments from the Police Department related to security, underage access, and overserving. Mr. Scott reviewed the training program planned by Whole Foods, which includes that all team members who pour alcohol and all store managers be TIPS trained. There will be cameras at pouring stations and footage would be available to local police upon request. ID's will be required and the register will not allow a sale until ID information is entered by staff. All team members will also be trained in alcohol surveillance to watch for suspect behavior.

M. Kornitsky asked if the petitioner's request was only for the hours of operation and to confirm that, at this time, no alcohol is allowed outside. He also asked about the type of glassware. Mr. Scott confirmed the request is only for current store hours and Mr. Renninger and Mr. Toppi noted the glassware would be recycling glass and there will be stations throughout the store for customers to leave empty glasses.

Neal Zagarella, manager at Vinnin Liquors, stated concerns about the parking lot that serves both Whole Foods and Vinnin Liquors. He is concerned about folks having a full tasting and then driving in a crowded parking lot that his customers also use, which is a safety issue. M. Kornitsky noted that the Board had worked on this parking lot previously when Vinnin Liquors had a petition for relief. He asked Mr. Scott if other Whole Foods locations who have this program have noted an increase in customers or accidents. Mr. Scott replied that they have not done a traffic count, but he does not know of any violations related to the program. Mr. Renninger noted that goal is not necessarily to increase customers but to enhance the shopping experience.

Margaret Ansara, owner of Vinnin Liquors, echoed the safety concerns and noted that when they pour wine, they are restricted from half an ounce to an ounce.

M. Kornitsky noted that the Zoning Board's jurisdiction is to the use itself, so one of the conditions he would propose is no alcohol allowed outside. If Whole Foods eventually wanted an outdoor café, they would need to come back to the ZBA.

Mr. Scott addressed the safety concerns, noting that there are multiple restaurants throughout the area which serve alcohol that bring foot and road traffic. You can also have more than one glass of wine in a restaurant. R. Landen noted that ultimately, much of the safety issue will be the jurisdiction of the police.

VINNIN LADY asked what the square footage of Whole Foods was. Mr. Scott responded approximately 36,000 sf. Customers will have the ability to have a glass throughout the public area of the store. The beer and wine bottles will be kept in a locked storage area. The eating area remains the in same location. Mr. Scott reiterated again that they are not proposing a package store.

Christine Beam, resident, asked if Whole Food staff would be TIPS certified. R. Landen responded yes, it was part of the training outlined in the proposal.

M. Kornitsky moved to close the public hearing.

MOTION: M. Kornitsky to approve Petition 19-21 to amend the existing use special permit to permit the consumption and sales of alcohol, and for a new use special permit for a restaurant or coffee shop containing more than 7,500 square feet of gross floor area pursuant to the application for the Sip & Shop experience to amend the 2004 decision related to the consumption and sales of alcohol, and to use the existing coffee bar as a sales area; subject to the restriction that there is no alcohol allowed outside of the store, and subject to approval by the Select Board as may be required by state law, and restricting serving to the hours of operation, and conditioned upon compliance with representations of required training of employees (TIPS or program that may be in effect at the time) and requiring ID's of purchasers of alcohol. Seconded by D. Doherty; unanimously approved.

4) PETITION 19-22

48 PROSPECT STREET

Application by MARK GIBB seeking special use permit to use existing basement area for an accessory apartment. The Petitioner gave a brief verbal presentation. He has been a lifelong resident of Swampscott and previously used the basement space in his single-family home for storage. Eventually he began renting the space. He received a letter from the Building Inspector requesting an inspection, where subsequently M. Kasper noted that the apartment required a special permit, and so is here before the Board. The apartment conforms to the design standards in the by-laws – separate entrance at rear of the house, does not have separate utilities, is less than 800 s.f. The petitioner has paved parking for three cars in the driveway, although generally only 2 are parked. There is also ample street parking. The space is not currently rented although he does have a roommate living in the main house (Oscar, also present).

D. Doherty asked what precipitated the inspection of the house. M. Kasper responded that the Building Department had received complaints from the neighbors that there were people living in the basement.

Alla Voznyuk, 50 Prospect Street and next door neighbor, stated that the street is very narrow and there are parking problems. She stated Mr. Gibb's tenants have parked in front of the house and in front of her mailbox. She also stated that there is only parking for 2 cars on his lot, not 3. There are also problems with trash as his bins are not covered. Last year, she spoke to the tenants and asked them to take the trash out. She stated that there are a few months of the year when Mr. Gibb's is not present, and the tenants have not been responsible.

Mr. Kornitsky explained that the Board needs to determine whether or not the request meets the requirements of the by-law, specifically section 5.11.7.0 and 5.3.2.0. He reminded all public speakers that comments should pertain to these requirements to be appropriate for our consideration.

Susan Gambale, 52 Prospect Street, is also an abutting neighbor who has lived on the street for 28 years. A few years ago there was a young couple who were tenants in the apartment. The police were called to the apartment to address physical abuse issues. Additionally, during the winter of that year when the road is more narrow due to snow, Ms. Gambale was trying to get to her house and the street was blocked by the tenant's car. She stated that he threatened her when she asked him to move. Her son's car, parked on the street, was hit by a different tenant who left a note. Her main concern is safety. The homeowner is absent for much of the year so there is no one overseeing the tenants.

Marla McDougall, 47 Prospect St, is concerned that approving this request will set a precedent for the street which is all single-family homes. What if other neighbors decide to rent out space? It would change the style and structure of the

street. She also has concerns about the vetting process for tenants. M. Kornitsky responded that it was not a criteria for analysis. The Board has approved a number of accessory apartments in the Town which have met the criteria for approval. There are protected uses that could be implemented without a special permit, and so vetting tenants is not within the jurisdiction of the Board. The narrowness of the street is an issue that pertains to the criteria of approval. He asked if cars parked on the street in front of Ms. McDougall's home. She responded yes, about 2-3 cars which makes passing and parking on street difficult.

Nancy Dilisio, 69 Eastman Ave, echoed the comments that the street is narrow and doesn't have sidewalks. She asked if the property has two egresses and asked about fire codes. Mr. Kasper stated that in his interpretation one of the egresses could be through the existing house, since the house is not a two-family dwelling. The proposed apartment has a separate rear entrance and egress through the existing house, and therefore meets that requirement. He also noted that fire safety is governed by the building code.

M. Kornitsky gave a brief explanation of how the accessory apartment by-law came about. It was approved at Town Meeting as an effort to create additional house stock in Town, and is often used for in-law apartments. Ms. Dilisio asked if there was a difference between an accessory apartment and an in-law apartment. M. Kornitsky responded that the relief covers all.

Christine Beane, resident of 75 Eastman Avenue and rear abutter, spoke about trash in her yard from the property. She requests that the petitioner put up a fence on the property line to contain the trash. M. Kornitsky asked Mr. Gibb if he would be willing to put up a fence if it were a condition of relief. Mr. Gibb responded that he would do that. He noted that he was on special assignment for a few months this past winter; however, he is normally on site beyond work. He has had prior experience renting and does vet his applicants. To address trash, his barrels are currently put underneath the deck. He could put fencing around the deck so all barrels are enclosed. He noted that no one has spoken to him about these issues before.

M. Kornitsky asked if there was enough room to require a condition that all tenants park off-street. Mr. Gibb said he could put gravel down and extend the driveway, and that there was plenty of parking on street. R. Landen asked if that was true with snow; Mr. Gibb responded that there is no parking when it snows. R. Landen asked if other residents park on the street. Mr. Gibbs said yes.

Ms. Gambale stated there has been no dialogue between the petitioner and the neighbors. Part of the consideration should be about safety of the neighborhood.

M. Kornitsky noted that the applicant needs 4 votes in favor on the petition since there are only 4 members present. However, the applicant has a choice to continue the application to another meeting where there are additional members present. If there were 5 members tonight, the vote would take place.

D. Doherty said he is not in favor on the petition. He believes the intent of the by-law was to accommodate extended family, not to rent out rooms at will. The latter brings it into two-family territory. At this time, he could also not make the findings of benefits vs. effects.

M. Kornitsky gave the petitioner three options: 1) Have a vote (if the applicant intended to appeal the decision); 2) withdraw the application without prejudice and bring it back later, or 3) continue the petition for a period of time to address concerns raised by the Board and abutters and come back at a later date. He suggested that, if the petitioner chose to continue, it should be to the October meeting to provide sufficient time to meet with the neighbors and come to a compromise.

R. Landen stated that he would have a hard time approving the petition based on the concerns heard thus far.

A. Paprocki would also vote no, based on his interpretation of the by-law.

Mr. Gibb requested that the petition be continued.

MOTION: M. Kornitsky to continue Petition 19-22 to the October 29th hearing. Seconded by R. Landen; unanimously approved.

PETITION 19-3

172 BURRILL STREET

Application of DAVID POLLINA to Appeal a Determination of Inspector of Buildings for 172 Burrill Street.

MOTION: CONTINUED TO September 17th (see above)

Meeting adjourned at 10:20 p.m.

Molly O'Connell
Senior Planner