



TOWN OF SWAMPSCOTT

ZONING BOARD OF APPEALS

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

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RON LANDEN
HEATHER ROMAN
PAULA PEARCE

DECEMBER 17, 2019 MEETING MINUTES

Time: 7:03 p.m. – 8:43 p.m.
Location: Swampscott High School, 200 Essex Street, Rm B129
Members Present: M. Kornitsky, D. Doherty, H. Roman, A. Rose, P. Pearce, R. Landen, A. Paprocki
Members Absent: B. Croft
Others Present: Doug Dubin (contractor), Jerome LeBlanc (Petitioner), Tiana Celesia (Property Owner), Ryan Wittig (Petitioner), Ken Shutzer (Attorney), Chris Drucas (Attorney), T. Kieran Nunan And Cynthia Nunan (Petitioners), Justina Oliver (Resident), Patrick & Caroline Malone (Residents), Christianne Reiniger (Resident), Mark Chase (Resident), Vladimir & Marina Markevich (Residents), Julian Morelli (Resident), Molly O'Connell (Senior Planner), Max Kasper (Building Inspector)

Chairman of the Board, M. Kornitsky called the meeting to order at 7:04 PM.

MOTION: M. Kornitsky to approve the previous meeting minutes from October 29, 2019. Seconded by R. Landen; all in favor (except A. Paprocki who abstained due to absence).

ZONING RELIEF PETITIONS

PETITION 19-32

60 TUPELO ROAD

Petition by ARTHUR BLACK C/O ROBERT C. MCCANN, ESQ., seeking modifications to a previously approved dimensional special permit, site plan special permit, and dimensional variance for the addition of a detached accessory pool house. Property is located at 60 TUPELO ROAD (Map 26, Lots 118 & 119). *NOTE: This application will not be heard in December and will be continued to the January 28, 2020 meeting.*

MOTION: by M. Kornitsky to continue the petition to the January 28, 2020 meeting. Seconded by R. Landen; unanimously approved.

PETITION 19-28

15 FULLER TERRACE

Petition by RYAN WITTIG seeking a dimensional special permit and/or special permit to convert an unfinished attic into livable space with the addition of front and rear dormers, and addition of two roof decks/patios. Property located at 15 FULLER TERRACE (Map 2, Lot 138). Ryan Wittig was present. After the October meeting, they went back to redesign the half story to comply with the regulations regarding gross floor area. They have resubmitted two plans – Version A and Version B.

Version A is an 832 square foot addition and includes two shed dormers, one with a structural truss with exposed rafters

that is below 7'3". The space is non-conforming because of the existing building, however they addition does not expand beyond the current setbacks.

The applicant noted that he met with all immediate abutters and presented option A and that no one expressed issues.

There was no public comment.

The Board members discussed the interpretation of the gross floor area definition and whether or not the proposed project met the requirements. H. Roman expressed concerns about setting a precedence where anyone could get around the 2.5 story limit by using a similar design and whether or not this was the intention of the by-law; however other members contended that it meets the definition and therefore could be approved.

MOTION: R. Landen to approve Petition 19-28 seeking section 6 special permit to convert an unfinished attic into livable space, that the plan is not a substantial detriment to the neighborhood, that it complies with the requirements of the by-law and is a half-story of 832 square feet, and will be constructed in accordance with Plan A. Seconded by M. Kornitsky. Motion approved 4-1-0 with R. Landen, M. Kornitsky, A. Rose, and D. Doherty for and H. Roman against.

PETITION 19-30

120 PURITAN ROAD

Petition by JEROME LEBLANC seeking a special permit (non-conforming use/structure) and/or dimensional special permit to construct/rebuild a garage on an existing foundation. Property located at 120 PURITAN ROAD (Map 21, Lot 28). Doug Dubin, contractor, Tiana C, new homeowner, and Jereme LeBlanc, previous homeowner, were present. Mr. Dubin explained that the original garage was destroyed in a fire. A building permit was issued to rebuild and a new foundation was poured, however the building was never completed the permit has since expired. This necessitated a special permit to reconstruct the building from the Zoning Board.

A. Rose asked if the new plan was to eliminate the encroachment onto the right-of-way. Mr. Dubin confirmed that this was the only change; part of the foundation line would be brought back 8 inches, so it no longer encroached onto the roadway. The new foundation would still be within the setback but would be more conforming than its previous nature.

Mr. Dubin also noted that there was one change from the previous building plans – the side entrance door to the garage has been eliminated and there will only be the singular garage door.

There was no public comment.

M. Kornitsky moved to close the public hearing.

MOTION: H. Roman to approve Petition 19-30 for a nonconforming use/structure at 120 Puritan Road to rebuild an existing garage was lost due to a fire. Seconded by A. Paprocki; unanimously approved (Voting members: H. Roman, A. Paprocki, D. Doherty, A. Rose, R. Landen).

PETITION 19-31

55 BLANEY STREET

Petition by T. KIERAN NUNAN AND CYNTHIA NUNAN, TRUSTEES C/O KENNETH B. SHUTZER seeking a dimensional special permit, special permit (non-conforming use/structure), special permit for parking relief, and special permit for size of parking spaces to construct a roof deck and dormer addition to the structure and reduce the number and/or size of parking spaces. The Petitioner plans on re-establishing the use as a two (2) family structure, which is allowed in the A-4 district. Property is located at 55 BLANEY STREET (Map 2, Lot 156). Ken Shutzer, attorney, and both petitioners were present.

Mr. Shutzer gave a brief history of the property, which has been used as a two-family dwelling before although most

recently was used as a single family. The relief being sought is for a roof deck to be added to the existing structure which will not extend beyond the existing boundaries, and for parking relief. This is an A-4 District which allows two-family dwellings as a by-right use and the parking requirement is 1 space per each unit. Historically, the property owners have used off-street parking on the adjacent driveway which is shared with 53 Blaney Street. There is a four-foot easement for use of this area and the neighbor had signed a letter about the use of the parking.

Mr. Shutzer noted that they had heard concerns about the addition of the roof deck and would be willing to remove it to alleviate those concerns. In terms of parking, he noted that since this has been a two-family property previously that the parking could be grandfathered, as he does not consider the use having lapsed since a use cannot lapse to something permitted by-right. He noted the construction of the side stairs as evidence that the two-family use occurred a long time ago.

Mr. Shutzer also noted that the proposed dormer needs no relief – it was included in the application to be conservative, however it would most likely exceed the by-law provision for the increase of assessed value.

A. Rose expressed concerns about the parking. This property is zoned for a two-family by-right, but the applicant must provide the requisite parking to meet the requirements. He and Mr. Shutzer disagreed about whether or not any of the parking could be grandfathered under previous uses.

M. Kornitsky noted that he looked at the deed of the predeceasing title which has reciprocal ROW for all purposes in, on, and over a strip of land. He agrees that the petitioners are protected under the Zoning Act to still use the house, but has concerns about overburdening the right of way. However, there is no second spot shown on the proposed plan. He wants to see a modification of the easement; the letter presented is not enough. He asked if there was any ability to park in the back of the lot.

A. Rose asked if there was any ability park cars tandem.

M. Kornitsky stated that if the use was used continuously, then he would agree with Mr. Shutzer's assertion that it is grandfathered. However, it was not; and so the use needs to meet the current parking requirements. Mr. Shutzer asked if the use as a single-family would protect one parking space. M. Kornitsky replied that it was an interesting question to consider.

Max Kasper, Building Inspector, said that the existing use is single family and the proposal is to use as a two-family again. This change in use requires compliance with the parking regulations.

Chris Drucas, representing adjacent neighbors at 61 Blaney Street, reviewed the petition and his opinion is that these plans do not meet the requirements for submission. M. Kornitsky noted that while there is a requirement to show abutting structures, it is not always enforced. Mr. Drucas stated that there is nothing showing distances to various property lines. If you look at adjacent lots, you'll see that this lot is very, very small in a highly congested area. This is one of the problem areas identified by the Police Department in terms of parking. To increase the use, and thereby increase the number of bedrooms, would not only draw more cars but more people to the neighborhood. The impact on the neighborhood would be dramatic. He presented a petition in opposition signed by neighbors. He showed pictures of the existing back yard and deck, showing how privacy would be affected by the proposed addition. Even though the addition is only 120 square feet, it is going up within the side and rear yard setbacks which are already extremely nonconforming. In fact, there is not a conforming setback on the entire property. A. Rose noted that it is going up in the same plane as the current structure.

Mr. Drucas stated he cannot see how the increase in density can be supported and they are opposed to the deck and dormer for that reason. Mr. Shutzer says it can be converted into a two family, but it should be done within the same structure and provide the requisite off-street parking.

Justina Oliver, owner of 27 and 29 Blaney Street, asked for clarification on off-street parking requirement. She did not

originally oppose the petition but had not seen the floor plan at the time and assumed it was an in-law suite. Her objection is to the number of bedrooms, which she believes correspond to the number of cars that would be added. There is only parking on one side of the street already and cars often obstruct the sidewalk. She has brought this to the Town before as an issue. The last sale of this property was in 2003 and it has been used a single family since then.

Patrick Malone, 6 and 10 Thorndike Terrace, also stated that parking is the biggest issue. He has been here for 20 years and the increase in parking issues in the neighborhood has been exacerbated over the years with the YMCA, Hadley School and Mission on the Bay, to name a few.

Christianne Reiniger, 60 Blaney Street, is in opposition and also has major issues with parking. This is a family neighborhood, but kids can't walk safely on the sidewalks. Additionally, the owners were operating an AirBNB in the house and she took photos of it. She thinks this conversion will most likely bring in renters and well over 2 additional cars.

Mark Chase, 37 Redington Street, said that the initial proposal was represented as a neighbor moving in and not a multifamily building. He always thought it was a single-family home. He was only shown an elevation of the plan and didn't have initial objections but then saw plans with the deck and had concerns about noise. He is withdrawing his support.

Vladimir & Marina Markevich, 53 Blaney Street, said they were misled initially and noted the house has been single family for a while. Originally one room was rented to another occupant, but parking was never an issue as it was always 1 car. They are withdrawing earlier support.

Julian Morelli, 60 Blaney Street, added that in early November there was a house party until 5 am caused by AirBNB tenants and the police were called. Later on, the petitioners came around asking for support and we were told they might live there eventually. The property was still listed on AirBNB but was later taken down. He doesn't believe they intend to live in the neighborhood.

Mr. Shutzer stated the application follows requirements for submission. In regard to the AirBNB, he received a call from Mr. Kasper and immediately told his clients that this would not be permitted and should cease, and the listing was taken down that day. The current owner lives in Carlisle, but they do plan on living at the property. He is not sure the parking problem can be addressed overall unless everyone decided to restrict the number of cars in this area. He has heard the concerns about the noise and the petitioner is willing to remove the roof deck. Lastly, he is hearing that the Board wants to see a parking plan and they are glad to go back and make a plan for a second vehicle.

M. Kornitsky noted he would need to see a parking plan that shows 2 parking spots.

A. Rose agrees with Ken about plan submission and that owner occupancy is not germane, however he does not see any way the petitioner can make the parking work and therefore is not in support of the request. He also doesn't feel that tandem spaces would be viable. He thinks there will ultimately be more than 2 cars and has serious concerns about overburdening the area.

Mr. Kasper stated that tandem spaces can qualify as parking spots; he is not aware of a section that prohibits this. If the petitioner provides a plan that shows 2 parking spaces and eliminates the roof deck, then the project would be approaching by-right status.

M. Kornitsky spoke again about overburdening the ROW. He would want to see two spots deeded.

D. Doherty expressed his concerns and his agreement with Mr. Rose's assertions.

After discussion with the petitioner, who requested to continue the matter, M. Kornitsky provided a summary for the room. The by-law provides a requirement for two family structures to provide 2 parking spaces. Two board members tonight have expressed they are unlikely to grant relief in size or for tandem parking spaces. He has indicated that he needs

to see a parking plan. His understanding is that the petitioner plans to revise the request, find the parking, and remove the roof deck. In doing that, they are likely to return to the building inspector to see if they would be able to do as of right. However, there is also an appeal process for building permits. Mr. Shutzer has also indicated that if he is unable to comply with the Board's requests that he would withdraw the petition without prejudice. So, there are many different things that could happen, but the petitioner has the opportunity to come back in January. Lastly, there will be five voting members and the petitioner needs four in the affirmative.

MOTION: M. Kornitsky to continue Petition 19-31 to the January 28, 2020 meeting. Seconded by A. Rose; all in favor (M. Kornitsky, A. Rose, D. Doherty, H. Roman).

Meeting adjourned: 8:43 p.m.

Molly O'Connell
Senior Planner

DRAFT