



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
BRADLEY L. CROFT, ESQ.
ANTHONY PAPROCKI
ANDREW ROSE

ASSOCIATE MEMBERS
RON LANDEN
HEATHER ROMAN
PAULA PEARCE

FEBRUARY 25, 2020 MEETING MINUTES

Time: 7:02 p.m. – 8:30 p.m.
Location: Swampscott High School, 200 Essex Street, Rm B129
Members Present: M. Kornitsky, D. Doherty (late), H. Roman, A. Rose (late), P. Pearce, R. Landen, A. Paprocki, B. Croft
Members Absent: none
Others Present: Max Kasper (Building Inspector), Molly O'Connell (planner)

Chairman of the Board, M. Kornitsky called the meeting to order at 7:00 PM.

MOTION: M. Kornitsky to approve the previous meeting minutes from December 2019; seconded by B. Croft; unanimously approved. (D. Doherty & A. Rose were not present)

ZONING RELIEF PETITIONS

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.

MOTION: by M. Kornitsky to continue the petition to the March 24, 2020 meeting. Seconded by B. Croft; unanimously approved. (A. Rose not present)

PETITION 12-5

0 ARCHER STREET

Petition by DIGIORGIO & MESSINA CONSTRUCTION CORP. for an amendment to an existing site plan special permit, independent living facility special permit for an alternative access route (Cushing Avenue) and to increase the number of units from 15 to 22. Property is located at ARCHER STREET (Map 7, Lots 213-248 and 250-255).

MOTION: by M. Kornitsky to continue the petition to the March 24, 2020 meeting. Seconded by B. Croft; unanimously approved. (A. Rose not present).

PETITION 19-33 & PETITION 20-06

460 HUMPHREY STREET

Petition by CHARLES PATSIOS TRUSTEE for an Appeal of Determination of Inspector of Buildings. Property located at 460 HUMPHREY STREET (Map 19, Lot 102). NOTE: Petitioner has requested to continue the item to the February 25, 2020 meeting.

M. Kornitsky opened the item, and noted that the Board has received letters from Four Seasons Motor Group who is a tenant of the property and is looking to intervene in both matters. B. Croft asked if there is any basis in the bylaw for this.

The basis is the argument that the tenant has standing and there are questions being raised about the use.

Mr. Panos, attorney for Four Seasons, noted that they do not object to the application but their interest is in regards to the Building Inspector's determination because they are an aggrieved party and a leasehold interest.

M. Kornitsky has no opposition to the intervention, but asked Mr. Panos if they are still looking to intervene since the property owner (represented by Mr. Rossman) is suggesting that they don't have standing. Mr. Panos stated they are not interested in the application except to the extent that there are any conditions that are determined and attached to the grant of relief that hamper Four Season's ability to go forward with any special permit request in the future.

M. Kornitsky will reserve the motion on intervention for Petition 19-33 until after the Board addresses Petition 20-06. He will consider the intervention on 20-06 withdrawn.

Mr. Panos stated he doesn't necessarily agree that the application gets rid of the determination of appeal, or that 20-06 being approved will cancel out the Building Inspector's enforcement. M. Kornitsky responded that if relief is granted for 20-06 then the Board will come to the question of whether or not the Building Inspector withdraws his letter.

A. Rose recused himself.

Mr. Rossman, attorney for the property owner, gave an overview of how the petition came to be. They received a letter from the Building Inspector in November 2019 about parking overburdening the property and met with Mr. Kasper to discuss potential solutions. They are not asking for any addition to the property and have laid out the parking on the premises as it exists with an emergency roadway on the back lot that has historically been used for the storage and parking of cars. There is parking for 3 cars at the bottom left hand corner and parking for 9 cars at the bottom right hand corner (in front of Four Seasons). The back lot (10 Cedar Hill Terrace) is owned by Mr. Patsios and has been incorporated as parking for employees and car inventory. The petitioner is also proposing to install new curbing and sidewalks along Humphrey Street to improve existing conditions. They will pay for the materials and labor and the Town will do the installation.

M. Kornitsky asked how many cars the petitioner plans to have on site. Mr. Rossman replied that it can't be fully determined because it depends on the size of the vehicles, but vehicle parking will be confined to the spaces as noted on the plan.

M. Kornitsky asked if the spaces meet the by-law provisions. Mr. Rossman replied no, it is not that type of parking. Cars will park in conformance with the lines on the plan. They will not encroach on emergency egress/ingress and no other cars parked on the exterior of the property other than what is shown. This is their effort to respond to the Building Inspector's concerns. This building has had this use for the past 100 years. They are not looking to expand the historical use, just create an orderly parking scheme.

The Board Chair turned to the Building Inspector for his thoughts. Mr. Kasper stated his objective was to get more clarity on what can be done and the intensity of the use that can be on the property. He does not have an opinion as to the maximum number of cars, but it has gone unchecked to date and is congested. There's an opportunity with this petition for there to be an agreement which lays out what's allowed, which is something the Town can clearly enforce.

M. Kornitsky noted that the old permits did not include the lot on 10 Cedar Street. Mr. Kasper agrees and thinks that is an expansion. Mr. Rossman disagrees.

H. Roman asked if the concern is that there are cars parked on the street as opposed to on the property. Mr. Kasper stated that is a concern, but not the primary concern of the zoning enforcement action. Mr. Rossman noted that they had met with the Police and whatever restrictions the Police want to put on the street is fine; they are just looking to take care of the property.

M. Kornitsky asked if the petitioner would be amenable to a condition that no employee inventory overnight vehicles could be parked on the public way. Mr. Rossman had no objections.

M. Kornitsky noted they can't necessarily regulate customer parking and asked if there was any off-street option. Mr. Rossman stated that customer parking can be accommodated in the back lot and they can include directional signage.

The item was opened for public comment.

Mr. Panos stated that their only concern with the condition regarding all parking off the public way is that Four Seasons occasionally has loading/unloading on the street while cars are being moved. Mr. Rossman noted he had no objection to this activity taking place on Cedar Hill Terrace and not on Humphrey Street.

R. Landen asked if there is a dumpster on the property. Mr. Rossman said there is no trash on the property – metal is taken away by a scrap metal dealer and recycling is picked up the down. The Board noted that the Health Dept. may require private trash collection.

H. Roman asked about the maximum number of cars. Mr. Rossman reiterated that they do not have a maximum, but expect a reasonable number might be 40.

M. Kornitsky noted the Board did receive a letter in opposition from a resident – Ms. Barbara Sweeney dated February 24th, who lives on Cedar Hill Terrace. She states that the street has been used for parking cars, many of which are left on the street. His opinion is that if they were to grant relief that the Board consider the previous restriction on parking discussed – no parking on Humphrey or Cedar with the possible exception of offloading.

The public hearing was closed.

M. Kornitsky stated he would be willing to grant relief but look to restrict parking and use to the site. The site has increased in size since the prior special permits by virtue of using 10 Cedar Hill, which is now in common ownership and a part of the B-1 zoning district. The parking plan appears to be reasonable, but the Board could consider a sunset clause to make sure its working well and have the petitioner return in one year.

H. Roman asked about a cap on the number of vehicles. M. Kornitsky responded that he would look to restrict the maximum by keeping everything on site and not blocking the proposed entrance/egress areas. If vehicles were parked on the street it would be a violation of the special permit which will give the Building Inspector direction on how to enforce.

D. Doherty mentioned the Mobil Gas Station example where there doesn't appear to be a restriction. He also has concerns about the delivery vehicles. M. Kornitsky replied that delivery hours should be during business hours.

B. Croft asked about prior decisions. There were restrictions but it was a different site at the time. Now the use is allowed in that district and the cedar hill terrace lot is zoned B-1.

Mr. Rossman asked to revisit the issue of the sunset clause. If the petitioner is not performing according to the new decision then the Board will know through the Building Inspector and any enforcement action. The petitioner plans to invest money in the sidewalk and curbing on Humphrey Street. M. Kornitsky replied that it doesn't move the needle for him; the petitioner is asking for a lot of relief and he does not think its too much to ask for a sunset. The Board members discussed the option of a sunset clause.

Mr. Rossman noted that one of the existing issues now is there is no defined curbing. Putting in the dedicated sidewalk will make it clear. M. Kornitsky suggested the sunset clause can apply only to the loading/unloading operations. A. Rose disagrees.

The Board and Mr. Rossman discussed off-site delivery, which ultimately can't be granted by the Board but is a police issue should tenants need to coordinate when delivery trucks arrive.

Mr. Panos asked if it is the intent of the Board to replace the two prior decisions with tonight's action. M. Kornitsky replied yes.

Mr. Rossman noted that it is his intention to then withdraw the appeal (Petition 19-33).

MOTION: D. Doherty to approve Petition 20-06 for a special permit to seek approval of a parking plan for off-street parking to serve all businesses located on premises at 460 Humphrey Street, and that all parking on site must be in accordance

with the plan submitted, including the proposed curb cuts and installation of new sidewalks which will be done in coordination with DPW; private trash collection on premises as requested by the Health dept; the hours of operation will be from 7 am to 6:30 pm Monday through Saturday and no operations on Sunday. This decision supercedes the earlier decisions. Additionally, no employee vehicles or inventory or overnight cars will be parked off site. Seconded by M. Kornitsky. Unanimously approved (voting members: D. Doherty, M. Kornitsky, B. Croft, A. Paprocki, H. Roman).

PETITION 19-34

197 ESSEX STREET

Petition by PROFESSIONAL PERMITS C/O GARRY POTTS seeking special permit – signs to update existing canopy and dispenser branding, provide illumination on fuel canopy, update existing freestanding sign, and replace two existing storefront signs with new designs. Property located at 197 ESSEX STREET (Map 12, Lot 102A).

MOTION: M. Kornitsky to withdraw the petition without prejudice; seconded by B. Croft. Unanimously approved.

PETITION 20-05

16 JESSIE STREET

Petition by SUSAN TWEED AND MICHAEL PROSCIA seeking a dimensional special permit and a special permit (non-conforming use/structure) to reconstruct a structurally deficient addition to an existing single-family home. Property located at 16 JESSIE STREET (Map 7, Lot 22). The homeowners/petitioners are present and gave a brief overview of the need to redo the addition.

M. Kornitsky opened public comment.

Fred Greco, a neighbor at 41 Roy Street, spoke in support of the project.

The public hearing was closed.

MOTION: A. Rose to approve the petition for a dimensional special permit and special permit for a non-conforming structure in accordance with the plans provided. Seconded by A. Paprocki; unanimously approved. (Voting members: A. Rose, H. Roman, A. Paprocki, R. Landen, P. Pearce).

PETITION 20-07

17 BLANEY STREET

Petition by FLOW DESIGN ARCHITECTS seeking a dimensional special permit and special permit (non-conforming use/structure) for renovations to an existing single-family home including a new entry and new second-floor deck. Property located at 17 BLANEY STREET (Map 2, Lot 149). Homeowner Ryan Mellig is present with project architects.

M. Kornitsky noted he received an email from the chair of the Historical Commission. The house is on the MHC inventory and should come for review before them.

Justina Oliver, chair of the Historical Commission, was present and stated that the timeline for their review doesn't normally run along the same lines as the ZBA, but she had flagged this property as she is a neighbor. They are meeting the following week and can review this in time for the next ZBA meeting.

MOTION: M. Kornitsky to continue the petition to the March 24, 2020 meeting so the petitioner can meet with the Historical Commission. Seconded by B. Croft; unanimously approved.

PETITION 20-08

23 SUMNER STREET

Petition by BENJAMIN YELLIN seeking a dimensional special permit and use special permit to construct an addition to an existing dwelling for a proposed accessory apartment. Property is located at 23 SUMNER STREET (Map 27, Lot 162).

B. Croft and M. Kornitsky recused themselves from the petition.

Paul Lynch, attorney for the Yellin's, gave an overview of the project. They are looking to add an addition which will

become an accessory apartment for their adult child who has disabilities, and who current lives off site. The proposal is one bedroom for one occupant, approx. 616 square feet, with no independent utilities. Under the bylaw, upon approval there is a condition that a covenant must be executed before the building permit is issued which ensures that any new or subsequent owner of the property must come back to this Board to seek a new special permit if they would like to continue using the accessory apartment. This ensures it won't become a two-family in the future. Except for the front yard setback, all other dimensional requirements are met.

D. Doherty asked about the connection between the proposed addition and the main house. The architect responded that it is an interior connection through the existing dining room.

R. Landen asked if there's a reason the petitioner can't comply with the front yard setback. Mr. Lynch stated that the design was trying to provide more open space to the rear of the structure, which abuts other properties.

The item was opened for public comment.

Damon Seligson, representing the abutters at 39 Allen Road, stated that his clients are concerned about the project as it directly affects where their front yard and driveway is located. They would rather that this proposal be smaller in size and less impactful to them. The other concern is what happens in the future to this unit.

The Board members asked if the petitioner and the abutter could work together to come to an amicable solution, although A. Rose noted that the current proposal is not encroaching on the side yard setback with is closest to 39 Allen Road.

Hillary Foutes, 39 Allen Road, said the unit is one story but it is 17.5 feet high and the petitioners could move it out toward Allen Road instead of towards them.

MOTION: D. Doherty to continue the item to the March 24, 2020 meeting. Seconded by A. Rose; unanimously approved (with B. Croft and M. Kornitsky abstaining).

Meeting adjourned: 8:24 p.m.

Molly O'Connell
Senior Planner