



# 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

## MAY 27, 2020 MEETING MINUTES

**Time:** 7:01 p.m. – 8:20 p.m.  
**Location:** Virtual Meeting through Zoom  
**Members Present:** M. Kornitsky, D. Doherty, B. Croft, P. Pierce, A. Rose, H. Roman, A. Paprocki, R. Landen  
**Members Absent:**  
**Others Present:** Paul Lynch (attorney), Benjamin Yellin (petitioner), Eric Hartmann (petitioner), Jeff Tucker (architect), Damon Seligson (attorney), Kevin Latady (architect), Molly O'Connell (planner)

This meeting was video recorded.

Chairman of the Board, M. Kornitsky called the meeting to order at 7:01 p.m.

MOTION: M. Kornitsky to approve the meeting minutes from February 25<sup>th</sup>, March 24<sup>th</sup>, April 30<sup>th</sup>, and May 5<sup>th</sup>. Seconded by B. Croft; unanimously approved.

## ZONING RELIEF PETITION

### CONTINUED - 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). Benjamin Yellin, Paul Lynch, and Jeff Tucker were present for the petition.

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

Paul Lynch, attorney for the applicant, gave a brief summary of the February meeting and the changes made to the application. The side yard setback facing the abutters has been increased significantly; the front yard setback on the Allen Road side has been reduced to 14 feet which now requires a variance, while the original request was for a dimensional special permit. This is a corner lot and not a self-imposed hardship; the new design is in response to concerns raised by the direct abutter on Allen Road after the last meeting.

A. Rose asked if any other front yard setbacks in the neighborhood are similar to 14 feet. Mr. Lynch replied that he wasn't sure.

D. Doherty raised two items. The first, does the bylaw give the ZBA the authority to approve an accessory apartment being created through an addition? He has some concerns on how to approach this matter. Second, in looking at the gfa analysis, does it include the basement that is proposed?

Mr. Lynch noted that one of the conditions agreed upon with the abutters is that the unit would only be for family, which can also be included in the ZBA decision. The living area is 603 sf as the bylaw definition does not include a basement in its calculations. Jeff Tucker, project architect, noted that the basement is attached to the main house and only for the storage of mechanical equipment; it will not be accessible from the accessory apartment.

R. Landen posited what if an applicant came to ZBA to build an addition, and then at a later date came back to the ZBA for a use permit to use the addition as an accessory unit. Would it be treated any differently? H. Roman pointed to the Puritan Park example.

R. Landen noted that he does have a concern about the need for a variance.

A. Rose also has concerns about the variance. On the bylaw issue, he notes that Town Meeting needs to have a discussion on how to proceed.

Mr. Lynch bifurcated the issues: 1) the accessory apartment as a new constructed addition, and 2) the variance/dimensional special permit issue.

A. Rose disagrees with D. Doherty on the issue of new construction and doesn't think the bylaw places that limitation on the Board. H. Roman is in agreement with A. Rose. The proposed unit is in a single-family dwelling and will not change the overall use. Both have issues with the variance request.

A. Rose asked if the setback on Allen Road could be moved back to 16 feet, which would be a dimensional special permit request. Mr. Tucker confirmed that they could modify the plans.

The item was opened for public comment.

Damon Seligson, attorney for the abutters, stated that his clients have agreed on conditions with the Yellins and support the current proposal. A. Rose asked if they are ok with the additional 2 feet setback from 14 to 16 feet on Allen Road. Mr. Seligson responded that as long as the unit does not increase in size, they are ok. R. Landen clarified that it will be no closer to the abutting property. Conditions that were agreed to include the occupant being a family member and that a fence be installed along the shared property line.

Jo Ann Simons, resident and affordable housing worker, noted that we are facing a housing crisis for adult children with disabilities and solutions like this are desirable. She believes this is a reasonable accommodation.

Jack Beerman, resident and neighbor, is in support of the petition.

Adam Yellin, son of the petitioners, spoke in support of the addition for his brother (Jacob).

Matthew Lyberg, resident and neighbor, spoke in support of the petition and noted that his own house was built with an ADA unit.

Hilary Foutes, abutter, stated that the issue has not been Jacob, but how a large addition on a corner lot would affect their abutting property.

Public comment was closed.

Board members discussed the decision, which should include conditions agreed upon between the two parties related to the occupant and fencing, and include that the basement will have no direct access to the unit.

MOTION: A. Rose to approve Petition 20-08 and plans with condition 1) addition is no larger than the current proposal, 2) the revised front setback on Allen Road is 16 feet for a dimensional special permit, 3) the setback on the Foutes property side is no closer than 17'7", 4) there will be no direct access from the accessory apartment to the basement, 5) approve a use permit for the accessory apartment, 6) that the agreed upon fence shall be installed prior to the issuance of a Certificate of Occupancy, 7) that the accessory apartment will only be occupied by a family members and 8) that all other accessory apartment regulations in the bylaw be followed. Seconded by R. Landen. Motion passed 4-1 with A. Rose, R. Landen, H. Roman, and A. Paprocki in favor; D. Doherty against.

## **MOTION - PETITION 20-10, PETITION 20-11, PETITION 20-12, PETITION 19-31, PETITION 12-5, PETITION 12-5(2)**

MOTION: M. Kornitsky to continue Petitions 20-10, 20-11, 20-12, 19-31, 12-5 and 12-5 (2) to the June ZBA meeting.  
Seconded by D. Doherty; unanimously approved.

## **CONTINUED - PETITION 20-09**

39 NICHOLS STREET

Petition by ERIC AND MARIANNE HARTMANN seeking a use special permit for an accessory apartment in an existing single-family dwelling. Property is located at 39 NICHOLS STREET (Map 11, Lot 678). Eric Hartmann and Kevin Latady were present for the petition.

The plan is to renovate an existing unit within the single-family home for the petitioner's mother-in-law. No home expansion. The Fire Department had submitted some comments which the applicant addressed.

There was no public comment.

MOTION: D. Doherty to approve a use special permit for an accessory apartment located at 39 Nichols Street, with the conditions that the unit be for a family member and the conditions requested by the Fire Department be satisfied.  
Seconded by B. Croft; approved 5-0 (M. Kornitsky, D. Doherty, A. Rose, A. Paprocki, B. Croft).

## **OTHER**

MOTION: M. Kornitsky to approve an administrative rule allowing scanned e-signatures and/or docu-sign signatures, if permitted by the Registry of Deeds. Seconded by R. Landen. Unanimously approved 8-0.

Meeting adjourned: 8:20 p.m.

Molly O'Connell  
Senior Planner