



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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ASSOCIATE MEMBERS
RON LANDEN
HEATHER ROMAN
PAULA PEARCE

NOVEMBER 16, 2021 MEETING MINUTES

Time: 7:03PM – 11:10PM
Location: Remote via Zoom
Members Present: M. Kornitsky, D. Doherty, A. Paprocki, B. Croft, P. Pearce
Members Absent: A. Rose, R. Landen, H. Roman
Others Present: Marissa Meaney (Land Use Coordinator), Rich Baldacci (Building Inspector)

Chairman of the Board, M. Kornitsky called the meeting to order at 7:03 PM.

ZONING RELIEF PETITIONS

PETITION 21-18

36 BEACH AVE

Petition by MATTHEW & ASHLEY TINA. Requests Special Permit for Nonconforming Uses and/or Structures and Site Plan Special Permit for construction of two-story addition. Property located at 36 BEACH AVE (Parcel ID: 6-244)

Architect Rafal Zelek was present with Matthew Tina to provide presentation before Board.

There was a discussion about grading, which led to imposing of condition that the basement must be 50% or more below grade in order to not be counted as story. Confirmation must be given to Inspector Baldacci at excavation stage of work.

There was no public comment.

MOTION: B. Croft to approve Special Permit for Nonconforming Uses and/or Structures and Site Plan Special Permit in accordance with plans submitted and under conditions that AC Unit be moved to the site of the house, and that grading of basement be confirmed with Building Inspector. P. Pearce seconds; unanimously approved.

PETITION 21-23

832 HUMPHREY ST

Petition by FRANZ & TINA ISRAEL. Requests Dimensional Special Permit for construction of pergola located behind garage. Property located at 832 HUMPHREY ST (Parcel ID: 22-22)

Ms. Israel explained the position of the pergola.

M. Kornitsky clarified that building permit was not sought, and petitioners are therefore retroactively seeking special permit for continued use. He confirmed that garage, to which the pergola is attached, is more than ten feet away, which adheres to bylaw that accessory structure must be located more than ten feet away from principal structure. He then inquired about the purpose of the ladder structure, which Ms. Israel stated could be used to hang towels and other linens, as there is a hot tub located under the pergola. It was determined, however, that the structure is too close to the rear setback to allow for dimensional relief, and thus needs to be modified in order to meet dimensional requirement.

The item was opened for public comment.

Garrett Melson, 15 Orchard Rd: As the neighbor immediately to the rear, he spoke before the Board regarding his concerns with the structure, namely the proximity of the structure to the rear property line, and the concern that the fire pit that has also been installed poses a safety hazard. He acknowledged that the tenants, who are the residents of the home and the users of the hot tub and pergola, have been reasonably respectful, but he worries that the next tenants may not be so courteous. Neighbor Charles Donohue also expressed his opposition.

Ms. Israel acknowledged that she is sensitive to the comments made by Mr. Melson, and simply constructed the pergola at the request of her tenants, who have labor-intensive jobs and were looking for a place to be able to relax. The tenants, Hannah Parker Maloney and her husband, apologized before the Board, as they were unfamiliar with zoning bylaws and therefore unaware of the requirements.

The item was closed for public comment.

B. Croft and M. Kornitsky agreed that the pergola may be considered an extension of the garage, and therefore does not constitute a separate accessory structure. The petitioner, however, must bring the structure into dimensional compliance.

MOTION: P. Pearce (with motion spelled out by M. Kornitsky) to deny Dimensional Special Permit based on the finding that the structure lies at distance of 4.1' from side-yard and 6.9' from rear-yard, and is therefore noncompliant with the requirement of 5' side-yard setback and the 10' rear-yard setback. M. Kornitsky seconds; unanimously approved.

PETITION 21-20

29 GLEN RD

Petition by ZINA GLIKBERG. Requests Use Special Permit and Dimensional Special Permit for the conversion of structure from two-family to three-family dwelling with addition of fire-exit staircase. Property located at 29 GLEN RD (Parcel ID: 23-9)

M. Kornitsky recused; item reduced to four voting members

Ms. Glikberg was present to explain petition before Board. Maintained that apart from staircase, there will be no other exterior structural changes to the house. One of the three bedrooms on the third floor will be converted into a kitchen, thus allowing the third floor to become a separate unit, which is allowed by special permit.

The item was opened for public comment.

Jill Hartmann, 40 Glen Rd: Expressed her concerns with the petition, citing increased traffic, on-street parking, density and the unaesthetic visuals of the staircase. Patty Bradford of 36 Glen Rd was in agreement.

D. Doherty stated that tandem parking in driveway makes it impossible to avoid on-street parking. B. Croft, however, stated that tandem parking has consistently been approved by the Board, and it's not up to the Board to decide whether it is good or bad as it is simply the reality. Suggested continuance so that neighbor can produce better rendering of staircase and use the next month to talk with neighbors.

D. Doherty and P. Pearce understand the situation, and were ready to vote tonight. A. Paprocki stated that this calls for a special permit for a reason, and the Board should consider the criteria.

MOTION: D. Doherty to continue to 12/21/21/. B. Croft seconds; unanimously approved.

PETITION 21-17

182 PARADISE RD

Petition by FAMILY DOCTORS, INC c/o KENNETH SHUTZER, ESQ. Requests Special Permit for Off-Street Parking and Loading, Special Permit for General Landscaping, Site Plan Special Permit, and Special Permit or Variance for expansion of parking services at recently-purchased lot. Property located at 182 PARADISE RD (Parcel ID: 5-148)

Attorney Shutzer clarified some of the conditions that were set forth by the Planning Board. Town Planner, Molly O'Connell, specified that Board requested that the permit be issued explicitly to the Trust, and will therefore not carry over to any new petitioner or property owner.

Patti Ramstine, 173 Paradise Rd: Stated that she worked with Attorney Shutzer on plantings.

MOTION: M. Kornitsky to make findings of fact, and approve petition on the basis of the unique triangular-shaped lot, the issues with the abutting of the state roadway and overhead utilities, and the petitioner's willingness to grant easement to Town for Rail Trail. Further conditions, namely those imposed by the Planning Board are as follows:

- Decision made explicitly to Family Doctors or other medical successors
- PB recommendation no. 2 will not be adopted
- Nos. 4 and 5 not limited to weather but also other emergencies
- Petitioner to work with abutters on choosing plantings,
- Petitioner to provide reasonable form of access, including easement, to Town for Rail Trail

D. Doherty seconds; unanimously approved.

PETITION 21-04-2A & 2B

53 PURITAN RD

Attorney William Sheehan reiterated the relief being requested by petitioner. Attorney Ken Shutzer provided his rebuttal.

M. Kornitsky stated that the Board needs to decide whether or not they agree with opinion of Attorney Stein of Town Counsel regarding the ZBA and the Historical Commission operating independently of one another. He, personally agrees with her, but would like three other "ayes" in order to proceed. BC, aye. AP, aye. PP, aye. DD, not sure.

M. Kornitsky then inquired about Coastal Flood Overlay District documents to Inspector Baldacci. He stated that if the work to be done is more than 50% of the assessed value of the structure, then the property must therefore comply with CFOAD standards and therefore the structure must be elevated.

Inspector Baldacci also stated that he recovered the missing plans dated Oct. 2019, which accurately reflect the changes made to the roofline of the principal structure.

M. Kornitsky would like to address Phase II tonight based on opinion by Attorney Stein. Board agrees, and will defer to Phase III following Rich's calculations.

The item was opened for public comment.

Justina Oliver, Chair of Historical Commission: Stated that when Mr. Sneirson was before HC in 2019, it was regarding boathouse only, not principal structure. She only saw the Feb. 2019 plans and not the Oct. 2019 plans.

A Rose (recused on item and therefore speaking as member of public) mentioned eliminating the sidewalk between the Citizens Bank ATM and the Chase bank property.

Jonathan Leamon, HC member: clarified that plans do not correspond to building permit.

The public hearing was closed.

M. Kornitsky stated that plans do, in accordance with Rich's finding of plans, that they correspond with roofline construction.

MOTION: M. Kornitsky to continue to 12/21/21. P. Pearce seconds; unanimously approved.

