



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
HEATHER ROMAN
PAULA PEARCE

JULY 19, 2022 MEETING MINUTES

Time: 7:07PM – 10:13PM
Location: Remote via Zoom
Members Present: M. Kornitsky, D. Doherty, H. Roman, A. Rose (via Zoom), P. Pearce (via Zoom)
Members Absent: A. Paprocki, B. Croft,
Others Present: Marissa Meaney (Land Use Coordinator)

MOTION: M. Kornitsky to approve minutes from 6/21/22. D. Doherty seconds; unanimously approved

MOTION: M. Kornitsky to continue 22-11: 8 Dennison Ave to September 20, 2022.

ZONING RELIEF PETITIONS

PETITION 22-06

80 MIDDLESEX AVE

Petition by JENNIFER SIMON. Requests Dimensional Special Permit to construct roof overhang over pre-existing front porch. (Parcel ID: 5-55) **Continued from May.**

Ms. Simon was present via Zoom.

Marc Kornitsky opened the hearing to explain where the matter left off. He then referenced before the Board the Bellalta vs. the Town of Brookline case law, in which the State of MA found that Chapter 40A, Section 6 of Massachusetts General Law protects the pre-existing nonconformity and the Swampscott bylaw may not supersede that by affording fewer protections.

Andy Rose then wondered if everyone with an open deck wanted to all of a sudden construct a roof overhang, would they be allowed to do as such? M. Kornitsky countered by stating that not every front deck in Town constitutes a pre-existing nonconformity (i.e. if said front deck was permitted by building permit and/or special permit from the ZBA).

Dan Doherty unsure about moving forward as the findings seem contradictory to all previous decisions of similar nature that the ZBA has issued in the past.

The discussion continued at length, with the Board agreeing to seek further input from Town Counsel as to how to proceed.

MOTION: M. Kornitsky to continue to 9/20/22. D. Doherty seconds; unanimously approved.

PETITION 22-12

24 CROSMAN AVE

Petition by ANDREW BROUGHTON. Requests Special Permit for Nonconforming Uses and/or Structures and Site Plan Special Permit for construction of two-story addition. (Parcel ID: 27-55)

Petitioners were present before the Board via Zoom.

There were no comments from the Board.

The item was opened for public comment. Ric Dexter, neighbor, expressed his support for the petition.

MOTION: D. Doherty to approve petition as submitted, finding that the addition is not substantially detrimental. M. Kornitsky seconds; unanimously approved.

PETITION 22-13

55 KENSINGTON LN

Petition by PAUL EDDOWES. Requests Dimensional Special Permit for construction of deck. (Parcel ID: 23-58)

Mr. Eddowes was present, in person, before the Board.

M. Kornitsky clarified need for dimensional relief on the front yard setback.

There were no questions from the Board.

MOTION: H. Roman to approve Dimensional Special Permit in accordance with plans submitted. M. Kornitsky seconds; unanimously approved.

PETITION 22-14

1 HILLCREST CIR

Petition by JOHN BARNES. Requests Special Permit for Nonconforming Uses and/or Structures to add dormers on second floor of structure. (Parcel ID: 6-154)

Applicant was present along with his counsel, Attorney Jack Keilty.

Attorney Keilty presented some architectural drawings that the Board had not yet seen.

The Board noted that the Gross Floor Area (GFA) measurement on the application was missing, but given that it is such a small amount of relief being requested, they would consider the application.

MOTION: M. Kornitsky to make finding that the proposed change would not increase the nonconforming nature of the existing nonconformity, and that no relief is required from the Zoning Board, and the plans are therefore permitted in accordance with the finding. A. Rose seconds; unanimously approved.

PETITION 22-15

12 HIGHLAND ST

Petition by DANA KENCH. Requests Dimensional Special Permit to expand deck. (Parcel ID: 2-64)

Ms. Kench and her husband were present, in person, before the Board.

Board explained that the side deck can be extended along the sideline, toward the back, but cannot extend 5 feet beyond the side-yard setback requirement.

Additionally, as of right, an additional 9 inches can be allowed onto the current deck.

The item was opened for public comment. Mr. Sanchez, a neighbor, expressed his support for the petition.

MOTION: M. Kornitsky found that provided that side yard setback cannot extend beyond 5 feet; the front yard enclosure and rear yard enclosure do not create a new nonconformity; and the extension of deck to no more than 10 feet off the rear and no more than 5 feet from the side is permitted, by right. H. Roman seconds; unanimously approved.

PETITION 21-26

12-14 PINE ST

Petition by PINE STREET DEVELOPMENT LLC c/o BILL QUINN, ESQ. Requests a Use Special Permit, a Dimensional Special Permit, a Site Plan Special Permit, and a Dimensional Variance for the demolition and construction of a three-story, mixed commercial and residential building with ground-floor retail and 22 residential units. (Parcel ID: 3-4)

P. Pearce noted that 10 feet has been taken off from the end of the building, and that there has been a loss in 3 parking spaces.

D. Doherty inquired about half-story discrepancy, as third floor still appears to be a full story. Per the definition of the bylaw, the third floor must measure at no more than 50% of the GFA of the floor below it. A. Rose argues that the half-story is on the first floor, which is the only option that would make sense in order to account for all of the parking onsite.

The item was opened for public comment.

Cindy Cavallaro – Expressed resident concern with what the reality will be when people move into building. Noted that it looks great on paper but the reality of the situation will be different.

Marsha Dalton – Raised questions about blasting and the height of the building. Steve Cummings, Inspector of Buildings, stated that the Building Department will require a full construction and demolition plan.

Cesar Chavez – Believes that there are too many units in the building, and this will make on-street parking situation much worse. Wondered what standards were used when conducting the traffic study.

The item was closed to public comment.

M. Kornitsky expressed support for petition. Noted that the project went through many iterations, and additionally, fears that new MBTA regulations would permit an even larger project. He is ready to give grounds for variance because parking cannot be located underground due to presence of Stacy Brook.

Attorney Quinn stated that height of building is still 36.2 feet (only 1.2 feet higher than limit for single-family home). The surrounding floodplain makes it near impossible to put parking underground. He noted that the building will be an asset for the community, and there is a history of the Board granting a variance in similar cases. M. Kornitsky and A. Rose agree.

H. Roman and D. Doherty argue that Board cannot artificially arrive at definition of story, and that it is not a hardship to put 2.5 stories on this property. H. Roman could understand the idea of a first floor half-story if part of it was underground.

P. Pearce would be willing to vote yes because of how far the project has come.

MOTION: M. Kornitsky to make finding that due to unique features related to soil conditions and abutting brook, which do not allow for construction below grade on lot, the bylaw thus involves a substantial hardship for the petitioner, so much so that a variance may be granted for the construction of three full stories. Other relief is granted, as requested, to permit the construction in accordance with the plans submitted. A. Rose seconds. MK – aye; AR – aye; HR – aye; PP – aye; DD – nay. Motion carries with 4-1 vote.