



# 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 CROFT, ESQ.  
ANTHONY PAPROCKI  
ANDREW ROSE

### ASSOCIATE MEMBERS

HEATHER ROMAN

# OCTOBER 26, 2016 MEETING MINUTES

**Time:** 7:00pm – 12:30am  
**Location:** Swampscott Senior Center, 200 Essex Street (rear)  
**Members Present:** M. Kornitsky, D. Doherty, A. Rose, A. Paprocki, B. Croft, H. Roman  
**Members Absent:**  
**Others Present:** Ken Shutzer (attorney), Patricia Cashman (applicant), Bill Quinn (attorney), Chris Drucas (attorney), Heidi Smyth (applicant), George Wattendorf (applicant), Stephen Banks (applicant), Ron Ranere (architect), Cathleen Day (resident), Jeremy Anderson (resident), Maureen Vincent (resident), Tom Belhumeur (resident), Wanda Mota (applicant), Ross DiPietro (applicant), Stephen Banks (applicant), George Potts (resident), Barbara Connors (resident), Judith Golditch (resident), Christine Allison (resident), Craig Bosworth (architect), Peter Ogren (engineer), James Emmanuel (landscape architect), Jeffery Bollen (resident), Tim Donovan (resident), Scott Hilderbrand (resident), Louise Petersiel (resident), Mary Bertroff (resident), Rick Jakious (resident), Tony Roossien (architect), Connie Lewis (resident), Douglas & Patricia Burden (applicants)

Meeting called to order at 7:00PM by Chairman Kornitsky.

## MEETING MINUTES

The Board reviewed the minutes from the September 21<sup>st</sup> hearing. There were no comments. On a motion by H. Roman, the September minutes were unanimously approved.

## ZONING RELIEF PETITIONS

### PETITION 16-16

### 9 KINGS BEACH TERRACE

Application of HEIDI SMYTH seeking a dimensional special permit and special permit (nonconforming use/structure) to add a second-floor bedroom and bathroom (19'x22') over existing flat roof single-story portion of structure, within side yard setback, and move deck over existing garage, within side and rear yard setback on a nonconforming structure. Map 1, Lot 178. *Continued from September 2016*

Attorney Chris Drucas was present representing the also present applicant Heidi Smyth, Ron Ranere the applicant's architect was also present.

Attorney Drucas brought up the attendance issue from the last hearing and asked the Board if the tasked members had listened to the previous tapes of the past hearings. The Board all agreed that they had listened to or were physically present at the past hearings. M. Kornitsky explained to the audience present that the meeting had been continued due to Board attendance, and members of the Board had listened to the audio tapes of the past hearings, and that the petition had been opened by the Board back in July.

Attorney Drucas began by stating to the Board that he had filed an amended petition, which identified the dimensional and nonconforming relief the applicant now seeks for the structure in the rear that currently is built in the rear and side setback.

Attorney Drucas then explained to the Board that his client wishes to add a bathroom and a bedroom over a flat roof garage where there is already a deck, then extend the deck. The new deck will not encroach on the neighbor's property, but the addition will only extend the size of the structure vertically. The addition will be built to match the existing roofline and built with architectural integrity.

Attorney Drucas then brought up past decisions made by the Zoning Board of Appeals for 9 Kings Beach Terrace. Attorney Drucas showed the Board using these decisions that there was originally a garage attached to the house and the connection of this structure to the home was made in 2000.

Heidi Smyth the applicant and homeowner then brought forth a poster board with pictures of the current property from Google Earth and amateur photography showing both the property and structures on it. Mrs. Smyth explained she has lived in the home at 9 Kings Beach Terrace for almost 25 years and that she has established strong community bonds. Mrs. Smyth went on to explain the family tragedy that had led to her adopting her nephews. With the adoption, a home study was performed and Mrs. Smyth was told that each child is mandated to have a bed, and at the moment, Mrs. Smyth explained she can't provide a bed for each. Mrs. Smyth reiterated to the Board the only reason they are seeking a special permit is because of this tragedy.

Mrs. Smyth using her poster board and pictures then showed the Board the other abutters to her home in relevance to their house as well as Shipwatch condominiums. The photos presented by Mrs. Smyth showed different angles and views of the house, and the areas the proposed additions would be constructed.

Attorney Drucas then mentioned that the photos are used to the relative alignment to the other properties and the ocean as well as the changes from the street. The photos were also used to put into perspective where the Shipwatch Condominiums are. Attorney Drucas stated the photos give a 180-degree view from 9 Kings Beach Terrace.

M. Kornitsky asked Attorney Drucas about former ZBA decision from 1994. M. Kornitsky explained that the decision discussed the detached accessory garage, M. Kornitsky then asked Attorney Drucas if the structure was separate? Attorney Drucas responded that the structure was separate. Mrs. Smyth then mentioned that she had withdrawn that petition, but M. Kornitsky responded that the Board in 1994 denied the petition.

Ron Ranere (Petitioner's Architect) then came forward to the Board to present.

Mr. Ranere explained the current condition of the home at 9 Kings Beach Terrace and showed photos of it to the Board. Mr. Ranere then used a map of the property which showed the proposed addition, he explained the addition will

maintain the existing roofline, and that the addition will look like it was always part of the property. Mr. Ranere continued to state that the addition will have the same type of window as currently exists.

Mr. Ranere continued to explain that a rail would be put around the rest garage roof not built on to become a deck. The new addition will protrude 13.8 feet from the existing home, and the new work done on the home will only be done over the second-story existing footprint. Mr. Ranere used elevation maps and drawings of the property to show the addition and its scale related to the existing home.

Mr. Ranere concluded his presentation.

Attorney Drucas began explaining how his clients proposed plans satisfy bylaws 2.2.7.0 AND 2.3.1.5

Attorney Drucas stated that the plans shown during the presentation show their petition meets what is needed for relief to be granted. He continued to state that the plans cause no substantial detriment, consistent with the neighborhood, that the condition of the home look very similar to the current one, and the benefits outweigh the issues.

Attorney Drucas continued his presentation to the Board by discussing his clients petition and how it satisfies section 2.2.7.3 and 2.5.2.5 in the Town bylaws.

Attorney Drucas stated the benefits of the proposed use of the addition outweigh the negatives, as well as Attorney Drucas does not believe there will be any negative economic, social, or environmental effects or any negative effects on Town services or the neighborhood. Attorney Drucas believes that his clients petition satisfies all of the aforementioned items and is entitled to the relief they have requested.

M. Kornitsky then asked that in regards to the roofline of the property, if they would only be adding potentially a half story to the property, and if there is a plan that shows the height of the ceiling for this addition. Attorney Drucas responded that the addition will have an open ceiling, but that there is no current plan which shows it as open.

B. Croft asked if there will be a ceiling in the addition, Attorney Drucas reiterated there would not be one.

The Board continued to review the documents presented to the Board.

M. Kornitsky then asked if Attorney Ken Shutzer sitting in the front row was here on this matter. Attorney Shutzer stated to the Board that he was there on behalf of an abutter to the property. Attorney Shutzer asked M. Kornitsky to first ask if anyone in the audience was there in support of the proposed addition first and then he would begin. M. Kornitsky asked, there was none. Attorney Shutzer then began.

Attorney Shutzer explained that he represented Cathleen Day and Jeremy Anderson 15 Kings Beach Terrace, and that they are direct abutters to the property. Attorney Shutzer continued to explain that their residence sits three-feet from the property line and the plot of land that is in question is 4,000 sq ft and not an applicable lot.

Attorney Shutzer, a former member of the Zoning Board of Appeals mentioned that the Petitioner in 1994 had come before the Board for a dimensional variance, which was unanimously denied.

Attorney Shutzer then presented to the Board mortgage plans to show how the property has changed.

Attorney Shutzer first presented a drawing on the mortgage document form 1992 and explained that it shows a two-and-a-half story structure and a detached garage. Attorney Shutzer presents to show this that the detached garage can and is permissible to be positioned closer to the property line than the residential structure. Attorney Shutzer then mentioned that it was previously asked by and done by the petitioner to combine this structure to the residential structure.

Attorney Shutzer then reiterated that the 1994 petition brought forward to the Board showed the aforementioned plan and also called for a deck and stairs, which was denied. Attorney Shutzer then explained that it was denied under the criteria of a dimensional variance.

Attorney Shutzer then discussed a second petition for the property in question from 2000, which was a request for a dimensional special permit, which the Board granted. This dimensional special permit granted the parties ability to fuse a stand-alone garage and a two-and-a-half-story structure. Attorney Shutzer explained to the Board that this created a structure which was no longer a non-conforming structure, but a permitted structure. Attorney Shutzer stated that under 40A section 6 the non-conformity was not the result of either the change in the bylaw nor was it divided prior to the implementation of the bylaw in 1924. Attorney Shutzer then stated that it is his (as a member of the ZBA at that time) position that in the second decision, that any relief would require that they (9 Kings Beach Terrace) come back in front of the ZBA, because at the time they (the ZBA) was mindful that they relief they were giving would not have a great impact upon the abutters.

Attorney Shutzer then continued to state the position of the applicant since 2000, with this new fused garage and the two-and-a-half story wood structure forms the footprint, but Attorney Shutzer states it does not.

Attorney Shutzer explained that for the sole purpose for the allowance of the construction for this piece, this is the only thing that was granted. The fact that both are now one piece, does not legitimize the granting of future further relief, predicated upon the foundation being three-and-a-half feet at its closest point to the sideline and that the lot size is only 4,000 sf.

Attorney Shutzer then continued to say that had the applicant went in front of the ZBA seeking a dimensional variance which they could, because the bylaws permit. Attorney Shutzer then would suggest that the factors and the information provided at the current meeting need be revised, because the criteria has changed.

Attorney Shutzer then asked the Board to review the Mass Appeals Court, case 455 from 1992, the Goldhirsch case.

Attorney Shutzer explains that this case refers to an earlier case Goldmutt V. Boldger, which talked about the “cubing effect”. Because as Attorney Shutzer explained, up to that point if you didn’t expand beyond the existing footprint, it was not considered to be applied for relief. Attorney Shutzer explained the Goldhirsch case implies that you need to look up, with the law today.

Attorney Shutzer then explained that in 40A section 6 states that non-conforming structures, including structures lawfully in existence or lawfully begun, and structures authorized by a building or special permit issued before the first publication of the notice of the public hearing on the ordinance of bylaw rendering the structure nonconforming”.

Attorney Shutzer then stated that you would have to go back to when it was possible to build on a lot that is 4,000 sf. As well as when 7.5 feet from the sideline came into effect. Attorney Shutzer then continued to read from the

Massachusetts General Law. Attorney Shutzer read “the protection of the statute extends only to those non-conforming structures that remain unchanged, or substantial modifications subject to regulations”.

Attorney Shutzer explained to the Board that he thought in essence the statute refers to changes in non-conforming structures, what the Swampscott Town bylaws in 2.2.7.3 defines. Attorney Shutzer then stated that this statute does not apply for why the applicant seeks relief, because he explains the structure on the property has been changed, and that the Board needs to decide on which standard to use.

Attorney Shutzer presented to the Board pictures of 9 Kings Beach Terrace, but from the view of the direct abutters he is representing. The first picture as Attorney Shutzer presented to the Board showed both the existing deck and porch currently on the structure on 9 Kings Beach Terrace. Attorney Shutzer explained that the first picture shows the additions and construction done in 2000. Attorney Shutzer used these photos to explain the view and look of the property from the abutters once the proposed construction is completed. Attorney Shutzer used an overhead picture of the property to show the structures on the property of both the direct abutters and the applicants property to specify where the photos were taken. Attorney Shutzer used these photos to show both where the roofline and deck that will be extended, as well as the garage that has been incorporated into the house.

Attorney Shutzer stated that both himself and Attorney Drucas can agree that the pictures show the future loss of light from the proposed addition. Attorney Drucas DID not agree with this, and M. Kornitsky explained to Attorney Shutzer that the photos just show what is currently there.

Attorney Shutzer reiterated that the former decisions made by the Board speak for themselves.

Attorney Shutzer asked M. Kornitsky to ask the Board if they have any more questions.

B. Croft asked Attorney Shutzer if the where the addition will be, if it will extend beyond where outer most of deck extends currently? Mr. Ranere stated that it will extend 3.8 feet farther to a length of 13.8 feet. Attorney Shutzer then clarified to the Board where the deck was constructed.

M. Kornitsky then asked the audience present if there was anyone else opposed to the application.

Maureen Vincent, 11 Kings Beach Terrace. Ms. Vincent explained she is in the building next to the property, below the Anderson Day family, whom Attorney Shutzer is representing. She began her opposition by stating her sympathy for Ms. Smyth and the situation she is in. But, Ms. Vincent has questions about what will happen to her situation with the new addition being proposed. Ms. Vincent stated that the proposed addition will extend over her garage and cut off both her sun and sky light. Ms. Vincent then asked that with the proposed addition, the roofline is being changed and asked the new height of the roofline. M. Kornitsky explained that the height of the roofline will stay the same. Ms. Vincent then then stated that the plans show the wall height and then an added attic or loft. , M. Kornitsky explained the floorplan and the heights show that there will be an open ceiling and there will be a loft area. Ms. Vincent then asked if the roofline height will be raised. M. Kornitsky explained that that roofline will mirror the current roofline. It was then explained to Ms. Vincent that the roofline is currently at 29.2 feet and that the new roofline height will be too. Ms. Vincent then used photos from to show her view with the new addition, and how the new addition will cut off her sky view and sun light, due to the extension. M. Kornitsky as well as the Board stated that they understand the impact.

M. Kornitsky explained that the addition being added is considered a single story, and that the height of the structure is 29.2 feet for the whole building.

B. Croft asked if the abutter has the whole first floor in her building, which she does, and continued to explain that the new structure will cover her garage and the southwest side of her house will be affected, and stated the sunlight exposure in her dining room will be blocked.

B. Croft, Attorneys Drucas and Shutzer and Ms. Vincent then used the photos presented to specify the locations of where the new proposed addition will have impedance.

M. Kornitsky then asked if there was any more opposition to the application from abutters.

There are none, M. Kornitsky then asked Attorney Drucas to respond.

Attorney Drucas stated that actions taken in by the Board in 2000 made the structure on 9 Kings Beach Ter. a single unit, 1-family structure, and that in the decision as well was the requirement that the petitioner come back before Board if any changes are made. Attorney Drucas then stated that the bylaw had changed and that when the structure was built it was legal and satisfied Town bylaws and regulations. Attorney Drucas stated that they created a single-family structure and are trying to add on to the legal structure legally created, and that "views" are not part of right of ways.

M. Kornitsky then stated that it would be an appropriate time for Attorney Shutzer to respond. Attorney Shutzer responded that the when the structure was built in 1930, the lot was buildable on. Attorney Shutzer states that the lot is no longer buildable due to Town bylaws. Attorney Shutzer then explained that the structure is a pre-existing nonconforming structure, but stated that it loses its protection once it structure is changed, now states it is not a pre-existing nonconforming structure, but a permitted structure. Attorney Shutzer then stated that the Bylaw states that permitted structures do not have rights once they have been altered.

M. Kornitsky then asked if Attorney Shutzer suggested that every non-conforming structure that pre-existed zoning that had a special permit that was granted lose its non-conforming status?

Attorney Drucas stated that he believes that is what Attorney Shutzer is saying.

Attorney Shutzer continues his statements and mentions the vehicle of a dimensional special permit, which would be dimensional special permit, section 2.3.6.0, which M. Kornitsky stated was the bylaw the applicant is seeking relief from. Attorney Shutzer stated that the applicant in the Town Bylaws. Attorney Shutzer stated he did not know if the applicant is seeking that because on the application it says non-conforming structure. Attorney Shutzer stated that if you are going from one set of standards which is a section 6 special permit to a dimensional special permit, that it is his position that there also be dimensional variances for cases such as the one before the Board. Attorney Shutzer explained that when the garage was connected to the house, the relief that was granted, that being a 4,000 sq ft lot, and 2 feet setback from the side, that those protections under a dimensional special permit, revert to a stricter standard, dimensional variance. Attorney Shutzer mentions that Attorney Drucas could go by this stricter standard which he believes is the appropriate relief sought.

M. Kornitsky then asked to clarify the type of relief being sought. M. Kornitsky stated that the dimensional special permit box on the application was check off.

Attorney Shutzer then stated that he also sees on the application a box checked off for a setback for a non-conforming structure, which Attorney Shutzer explained the structure is not. Attorney Drucas then stated that it is. Attorney Shutzer then explained to the Board why he did not believe it to be non-conforming and, to which M. Kornitsky stated he does not believe he can agree to that, and asked to move on to the analysis of the 2.3.6.0, dimensional special permit criteria.

Attorney Shutzer then stated to the Board that this is not a case of view easement, but that with the construction of this addition there will be no light air that is now currently enjoyed.

M. Kornitsky stated to Attorney Shutzer that the applicant is not seeking a variance, but a dimensional special permit.

Attorney Shutzer then explained each part of the criteria and how the proposal does not satisfy it.

Attorney Shutzer began with the first criteria, no practical alternative to the proposed structure that is capable of complying with requirements. Attorney Shutzer explains that you cannot build whatever one wants and claim that is the only place to put it, and therefore you have met the requirement.

Attorney Shutzer then continued on to explain the second criteria which is, a structure without substantial detriment to neighborhood, Attorney Shutzer states you need to look no farther than the direct abutters. Attorney Shutzer stated that the structure only is only 3.5 feet from the property line, when it should be at a minimum 7.5 feet back. This setback grouped with the fact that the lot is only 4,000 sq ft Attorney Shutzer explains you have almost covered the entire lot. Attorney Shutzer continued to state that the house itself is allowable, but that the additions are discretionary. Attorney Shutzer then reiterated that the addition, will impede and take away the light and air that the abutters currently have.

Attorney Shutzer then moves on to the criteria that the structure is consistent with the neighborhood architecture. Attorney Shutzer states that no other lot that is burdened with as much house as 9 Kings Beach Terrace.

Attorney Shutzer then moved on the criteria of benefits to town and neighborhood. He agrees there will be a benefit to the applicant, but does not believe there is any benefit to the town or the neighborhood and states the fact that no one spoke in support or favor of the addition, other than the applicant. Attorney Shutzer stated that the abutters that are affected the most by the addition are in attendance and that they both stated they do not wish the addition to be built as it will impact them. Attorney Shutzer then stated that he is not relying on "view easement" and had never used the words view easement.

Attorney Shutzer then stated that section 2.3.6.4 and how it is coupled with the prior section, as well as section 5.2.3.1-6 need to also be addressed. Attorney Shutzer said that he has no way of knowing the actual percentages and matrix on the site plan, and will accept the numbers on it as accurate.

Attorney Shutzer explained that in 2000, by combining the garage and the home, the applicant received what they sought, but that they lost the ability to add on to the roof of that garage, which he states was an accessory structure, up until the allowance of the combination, which, as Attorney Shutzer stated the applicant is using as the base of their application.

Attorney Shutzer stated that there are no decisions in the past that have been in support of what the applicant is seeking, but in the contrary, Attorney Shutzer stated the decisions and cases he has brought forth have supported his

call for the relief to be denied. Attorney Shutzer also stated that the addition the applicant seeks to add is a substantial change to the structure. Attorney Shutzer stated the garage originally could only be 15 ft high, but when they are combined they are now allowed to be regulated under the residential standard, which can be 35 feet high.

Attorney Shutzer stated that the house in 2000 changed and the garage was added, and that it is not the same as the original house built in 1930, and that Attorney Drucas is seeking relief from the Board based on the structure post-2000 decision.

Attorney Shutzer then asked the Board to deny the relief the applicant is seeking.

M. Kornitsky then asked Attorney Drucas if he has anything else to add.

Attorney Drucas explained that the statement about the home being out of scale with the neighborhood after the addition, Attorney Drucas then used pictures to show the neighborhood and the other houses, showing other smaller lots in the neighborhood with large homes on them.

Attorney Drucas then stated that if you look at what happened in 2000, a garage was attached and a breezeway was created. A deck between the garage and the house was enlarged and the breezeway was created. Attorney Drucas stated that by adding the garage you have created one structure.

M. Kornitsky then asked the Board for questions, and if they want to address this decision tonight or hear more and continue it.

H. Roman asked if there had been any effort for the abutters and applicant to work together. Attorney Shutzer responded that he had not heard of any alternative plan.

A. Rose then clarified H. Roman's question by asking if any thought had been put into having a pitched roof, to get use of space that is needed, and not have any extra volume then the applicant has to have. Attorney Drucas stated that he is sure his client and him would be willing to do that if it would be in the abutters support, but not sure if it would.

H. Roman then asks if the abutters if they would be willing hear a different idea. The abutters mentioned it would still impact their space and light.

B. Croft then asks what is going to be the impact on the abutters, specifically? The abutters then stated that the adding of the story will be bulk of impact. B. Croft asks if open to changes in roof to reduce impact? Ms. Vincent, then asked if there is any possible way to redesign the interior of the home to make room for the two extra beds?

The Anderson-Day family explained that they would have to discuss that privately.

Attorney Shutzer then explained that if the hearing was continued and the applicant was to provide alternative plans then his clients would review them, but does not want them now to agree to or disagree without seeing re-done plans.

M. Kornitsky then asked if the applicant and abutters want to continue the hearing. Ms. Smyth did not want to continue, and Attorney Drucas stated he does not see a change happening.



D. Doherty then asked what he been missed. M. Kornitsky replied that not much, D. Doherty then says that he wishes to sit out vote, but M. Kornitsky explained that he only had missed the introductions and that he wishes to make D. Doherty a member of the voting Board.

M. Kornitsky then constituted the voting Board as A. Rose, B. Croft, D. Doherty, A. Paprocki and himself.

B. Croft then made a motion to close the public hearing, the Board is all in favor, the hearing is closed.

M. Kornitsky then relayed his thoughts the hearing.

M. Kornitsky states that there is a non-conforming structure, and it appear to him that there is criteria for a dimensional special permit, there is a 3200 sf home, that has been combined with the accessory structure, that in 2000 significant relief was granted. But that now there is a request for relief sought on a 4000 sf lot. M. Kornitsky explained that it is interesting in that the request for the addition is vertical, and that often, it provides opportunity for the ZBA to grant relief, because it usually doesn't encroach any further on the property line. But M. Kornitsky states that the addition is considered a changes and that it is increasing the non-conformity as there is now an additional structure that is proposed to be built on top. He believes the vertical addition, does not meet standard of the dimensional special permit, due to the detriment he sees. M. Kornitsky then stated that his vote would be to deny. He then asked for D. Doherty's opinion.

D. Doherty agreed with M. Kornitsky's thoughts and believes it will have a substantial impact on the abutters, he would also deny.

M. Kornitsky then explained that there would be two votes for no, and then mentioned that he does not believe he needs to go further with explanations of why the members would vote for denial. M. Kornitsky then stated that the Board does allow for applicants to request a with-drawl, which Attorney Drucas did request. Attorney Shutzer stated he had no opposition to that.

A. Rose then stated that he did have questions, and that he would vote in the opposite of the two previous vote explanations. A. Rose stated that they are only increasing the vertical, which is OK because they are within that 2 ft setback from the sideline. A. Rose stated that by going up would not increase the non-conformity. A. Rose then asked if the applicant was to come back with a changed plan to elongate the addition and move the deck to the opposite side, getting rid of an ocean view from the proposed deck. M. Kornitsky stated he might vote more favorably on that petition than the current petition. M. Kornitsky then brought up past decisions such as the 1994 decision and the way that this applicant has brought forth past petitions. M. Kornitsky stated that he might make a more favorable decision if the plans were changed.

MOTION : By M. Kornitsky to allow the applicant to Withdraw their petition, D. Doherty seconded, unanimously approved.

## **PETITION 16-27**

12-24 PINE STREET

This is an appeal by Charlie Patsios of the determination of Inspector of Buildings regarding an order to terminate the occupancy by the tenant Spero Construction as it is a contractors yard in a B-1 zoning district.

M. Kornitsky then explained the applicant had filed a request to withdraw.

MOTION : By A. Rose to accept the request to withdraw, D. Doherty seconded it, unanimously approved.

## **PETITION 16-20**

## **96 & 96A PURITAN ROAD**

Application of C. PATRICIA CASHMAN seeking a special permit (non-conforming use/structure) and appeal of determination of the Inspector of Buildings to allow for two residential units at 96 Puritan Road and three residential units at 96A Puritan Road. This petition is continued from the September meeting.

M. Kornitsky then opened the hearing to Attorney Kenneth Shutzer, who is representing Ms. Cashman.

M. Kornitsky stated that the Board last left off that the Board needs more information about this property. Attorney Shutzer stated that his client used the library resources to look up documents.

Attorney Shutzer states that he has talked with the Town Assessor and information from Patriot Properties is inaccurate, and that the only entry on the properties card is from when he in fact went and visited the property the prior year. B. Croft asked for a statement. Attorney Shutzer mentioned that he was faxed the information. Attorney Shutzer mentioned that the library did not have voting records but that they did have Poke directories. Attorney Shutzer mentioned that unfortunately poke directory only applies to those who return the post cards. Attorney Shutzer explained that she had compiled the list of Poke directory names for the address she had found and will present that to the Board as well as the personal information she knows as well.

Ms. Cashman approached the Board to show the people that have lived in the house previously and brought to the Board the street directory. Ms. Cashman explained the past residents on the property and different structures as well as the history of the structures on the property. Ms. Cashman explained that people have lived in the structures for many years. She explained the rear structure was used as a medical practice until 1986 then the first floor was converted to two apartments, and the second floor remained a residential unit. The front building on the property, the two apartments there always existed. Ms. Cashman explained that people living in the structures has been happening for many years.

Ms. Cashman then asked the Board if they have any questions.

H. Roman asked about past renovations on the garage. Ms. Cashman explains that the garage was renovated, and Attorney Shutzer added in that the garage was extended as well, Ms. Cashman agreed to this.

Attorney Shutzer then brought up the past post directories.

Attorney Shutzer then shows the correspondence from the Town Assessor and the records that he had. It highlighted the two units in one and three in the other. Attorney Shutzer then mentioned that if you look at what Patriot Properties has provided, only in 2015 is it referred to as a multi-household residence. Attorney Shutzer also mentions that from 1908 on it is labeled as different things, such as offices, professional offices and two family. Attorney Shutzer states that the person whom he received this information did not know the history of this specific property, but that the

information was inaccurate. Attorney Shutzer then states that he has a supplemental document to the information provided and that it indicates the property has 5 units.

Attorney Shutzer brought up two legal issues that he felt were not discussed fully in the last hearing.

The first legal issue Attorney Shutzer states is that under Section 2.2.7.4. Attorney Shutzer explained that his original argument was that if the property did not have 5 units, then the medical office use must remain. Attorney Shutzer then went on to explain section 2.2.7.4 as saying, a non-conforming use or structure that has been abandoned. Attorney Shutzer continued to explain that he suggests the law as saying, in regards to 96 & 96A Puritan Road, is not a non-conforming use, but a permitted use, and therefore distinguishable.

Attorney Shutzer then states the former case of *Mendez V. Barnstable*, 1990. This case states that a non-conforming use or structure is created due to a zoning change where a business use had begun by variance, which Attorney Shutzer states in his case, it had. He continues, that the use was not a non-conforming use which could be altered by special permit.

Attorney Shutzer then explains that M.G.L 90A section 10 states that there are lapses with variances, but that these lapses only occur with the application of the use variance.

The second issue that Attorney Shutzer mentions is the M.G.L 40A section 7, which addresses the issue of a building permit being granted, with a six-year statute of limitations to appeal it. Attorney Shutzer states that in previous hearings he provided many building permits to the Board, for the remodeling and removing of kitchens in both structures. Attorney Shutzer then explained that what the cases say is that they then go from an illegal use to a non-conforming use, which Attorney Shutzer explains is still illegal, for the fact it never gained approval from the Zoning Board of Appeals, but it is an acceptable and permissible non-conforming use.

Attorney Shutzer states that both concepts contrast each other, he explains that the Board should either accept his initial case to the Board, that if the structure is medical use with 20+ spaces for cars being changed to a five-unit use than therefore it would be less demanding, which the Attorney Shutzer states the Board has the ability to do under the case he just cited.

M. Kornitsky then clarified the Board could only do that if that is the present use of the structure.

Attorney Shutzer then continued to explain, or, alternatively under M.G.L. 40A section 7. Attorney Shutzer stated that the building permits he provided to the Board was for the building of kitchens. Attorney Shutzer states that the only rational use of these kitchens would be for living use.

Attorney Shutzer then explained certain regulations regarding limitations on building permits. Attorney Shutzer explains that the statute of limitations on the building permits have run out and that there are no cease and desist orders with building permits.

Attorney Shutzer then explained that section 7 of M.G.L 40A gives these structures a special status.

Attorney Shutzer continued to state that what he is asking the Board to do, is nothing. Attorney Shutzer explains that technically the town has no authority or grounds to take action. Attorney Shutzer explained that his client is trying to

sell the property, and that the two people who stood up at a previous hearing in opposition wanted to buy the property. Attorney Shutzer explained the property was not sold to them, he continues to explain that the two specifically did not have any objections to the property use because they wanted to buy the buildings with the five units. Attorney Shutzer explains he didn't want to provide to them a zoning recommendation to the buyers that they are in fact legal.

Attorney Shutzer mentions another case which gives the Board the authority to approve. Attorney Shutzer then states that he is not looking to change the interior or exterior, any relief from Town Departments, besides the Fire Department which asks for the building to have sprinklers. What Attorney Shutzer is asking is for the ZBA to give their stamp of approval for the building permitted apartments for a use.

Attorney Shutzer then stated that if the Board does not believe in its continued use as residential units, they revert back to the alternative case, where the building continues to be a medical office, that has been illegally used for something else, that it goes to a lesser use, which Attorney Shutzer explains is the apartments, approved by the adoption of the permits by the Town allowing the kitchens to be installed.

M. Kornitsky then asked the Board if they have any questions.

D. Doherty stated that he is troubled there is no mention in prior decisions about there being any occupancy by prior tenants. D. Doherty continues to state the decision made by Mr. Rudolf of the ZBA is very detailed and there is no mention of any occupants.

Attorney Shutzer stated that, that decision was not seeking relief for the second floor of either building. Attorney Shutzer explains that the medical office was only on the first floor. D. Doherty is bothered by the fact that resident occupancy on the second floor was not mentioned. Attorney Shutzer states that he has someone who has lived there, Ms. Cashman, who has stated that someone has always lived on the second floor.

D. Doherty stated that he is not doubting Ms. Cashman, but that he does not think that the Board at the time the Rudolf decision was made, knew about the tenants. Ms. Cashman responded that the tenants were not part of the reason the hearing was being held. D. Doherty responded to this by saying the decision will usually give a full description of the property and what is there.

Both M. Kornitsky and Attorney Shutzer discussed the findings and decisions of the previous hearings. Attorney Shutzer explains to the Board that the 1986 decision was in regards to expanding the size of the back building, which had been a carriage house, and was rented out by Ms. Cashman's mother.

M. Kornitsky and Attorney Shutzer continue to discuss the past decisions and hearings regarding the applicant's property.

M. Kornitsky continues to read the decisions.

M. Kornitsky then mentions Attorney Shutzer's previous statements regarding building permits for the property. M. Kornitsky asked about the moving of a kitchen in 1996, building permit 5307 and if this suggests that it means two separate kitchens. Attorney Shutzer does not agree it means two separate kitchens.

Attorney Shutzer mentioned that he is relying on section 7, that building permits were granted and that under section 7 they have a six-year statute of limitation for use. M. Kornitsky does not agree that the statute says “use”. Attorney Shutzer states it does and that.

M. Kornitsky stated that he would like to know how you get more than one unit permitted from the 1996 decision. Ms. Cashman says first floor unit in the front structure has always been there. M. Kornitsky then asks if it has always been a two-family, which Ms. Cashman agrees it has.

M. Kornitsky asks if one of the unit kitchens were renovated in 2007, Ms. Cashman agrees yes.

B. Croft mentions that both units in the front have not always been occupied it appears from the information presented to the Board. Ms. Cashman states that is mostly true. Ms. Cashman explains that some residents did not fill in the forms and that’s why there can be places where there are names missing.

Ms. Cashman then explained that she has also listed the names of residents from her memory and in recent years from rent rolls. Ms. Cashman mentions that some places there are two names mentioned, that is because they resided in separate residences.

M. Kornitsky asks when the front building was converted to be used as residence and a medial office? Attorney Shutzer clarifies that the rear building was the one converted into a medical office.

Attorney Shutzer continued to explain that he is not looking for the building inspector decision on this property but a recordable decision by the Zoning Board of Appeals to bring to the bank.

Attorney Shutzer explains that at one point in time the medical office changed into residential units, and that a remodel had happened. Attorney Shutzer states that he is asking the Board to agree with what the Building Inspector granted years ago. Attorney Shutzer continued to state that he is not seeking relief or changes, he explained all reliefs and permits have already been granted and work has already been done.

The Board then continued to review the documents before them.

M. Kornitsky stated that the building permits gave the property the ability to build kitchens, but asks if that gives the ability to have residential unit use.

D. Doherty asked if those are the only permits. Attorney Shutzer stated those were the only permits they could find, and that Ms. Cashman worked very hard to find both the permits and the other information.

Attorney Shutzer then mentions, what if the Board does not believe it to have enough information to grant relief, then they are back to the building being permitted for medical use with residential units in it. Attorney Shutzer then asks, what happens then?

M. Kornitsky mentions then, what would be allowed its permitted use and what is allowed by the Town Bylaws. Attorney Shutzer stated that it has no permitted uses. M. Kornitsky explains that it does, it can be used as a single-family residence, with an accessory structure. A. Rose adds in that the accessory structure may be able to be used as a medical office.

A. Rose and Attorney Shutzer both discuss the statute of limitations regarding the building permit, and what it does and does not allow as well as what it says.

M. Kornitsky then stated that the Board only needs to give a decision, and that the applicant and their representative are saying that if the building inspector was wrong, than they have protection.

The Board and Attorney Shutzer continue to try and clarify the issue and goal currently before them. Attorney Shutzer then tried to clarify to the Board what the permits give the ability to do and the language on them.

M. Kornitsky stated that he does agree both permits are outside of the six year statute and that these permits give some legitimacy to one unit in the front building and one unit in the back. But, he continues to say there needs to be more specific information proving more residences, stating he doesn't understand where there could be more than one residence in the back building.

H. Roman stated that the Building Inspector does not always wander the house and that this is why they might have missed the other residences.

Then amongst themselves the Board discussed and tried to determine how many kitchens were on the permits.

A. Rose states he does not want to set precedence for illegal structures to be built and have the owners wait six years for the statute to be up.

Attorney Shutzer stated that when the prior Board authorized the permitted use, applicant became stuck, because they never indicated what was to happen.

Attorney Shutzer then asks the Board to write a letter that in fact there are five units, that have been there for many years. Attorney Shutzer wants the Board to do this so that his client can sell the property.

D. Doherty stated that there is not enough evidence to overrule the determination from the Building Inspector.

Attorney Shutzer then continued to state that he needs to get the approval of the Board for the residential units so that his client can attain title insurance.

H. Roman then states that Attorney Shutzer has only brought forth permits for only two kitchens.

Attorney Shutzer stated that the town doesn't have many Building Permits and it is hard to find them and figure out what they are for. Attorney Shutzer continues to ask the Board to review the locus map of the property to view how old the structures are.

A. Rose reiterated that he is nervous about giving a letter of approval for the apartments if they are not right, and that the property is listed as a single-family structure with an accessory structure. He continued to state that the Board cannot condone what is happening at the property if it is wrong.

D. Doherty states that the permits are not enough evidence, and M. Kornitsky and H. Roman agree to this.

Attorney Shutzer states that there is no one that is able to refute Ms. Cashman's claim about occupancy.

M. Kornitsky then explains that the issue is with the permitted use. Attorney Shutzer stats that the Building Inspector had been through the property multiple times and that the Board should visit the property and observe it before making a decision.

M. Kornitsky then ask if there was a pre-existing use in the back building upstairs for a for residential use, and a kitchen is then permitted, Attorney Shutzer agrees. M. Kornitsky then brings up the building permit from 2010 which granted for first floor. M. Kornitsky states that he does not think that is enough to say there are two apartments in the back, and that this could only be for an extension of the single-family use.

Attorney Shutzer states that Ms. Cashman knows there was multiple apartments back there, because she has lived on the property for many years.

M. Kornitsky then states that he understands Ms. Cashman's claim and that it is evidence for the Board, but is suggesting that the Building Permit in 2010 granted protection for only one unit, not two. He continued to state he does not think there is enough evidence to grant a special permit for the five units.

A. Rose asked D. Doherty if he is saying there is not enough construction work permits from the property to say there are 5 units there. D. Doherty agrees.

A. Paprocki then stated he does not believe the building of a kitchen does not give enough evidence there is a property back there.

Ms. Cashman says it was easy to turn med office to residential unit, and that it did not require much construction.

M. Kornitsky then asked if anyone in the audience had any questions.

A former resident in the apartment on the property suggests that a permit for the kitchen could have been a permit for the remodel of the kitchen and if the Board visited the property you would see the kitchen on the second floor has been there for a very long time.

M. Kornitsky said that his argument is that the creation of a kitchen on the first floor did not create a second unit, but expand the one unit already there. M. Kornitsky states that he does not think the Board can grant the approval of the second unit just because of the building permit.

H. Roman and A. Rose then explain to Attorney Shutzer and his client that the building permit does not show use.

Attorney Shutzer understands the permits are not enough evidence, but that Ms. Cashman's statements and the former resident help their case.

Attorney Shutzer explains he has a use that Town is not prohibiting and that the is legitimized by the Building Permits, but that a buyer needs something official to say that.

A. Rose then asked the Board what if they were to visit the property and see there are 3 apartments in the back building and two in the front, that are old and had not been touched very beyond the limitation of the Building Permit, would they change their opinion.

M. Kornitsky does not think that his opinion on issue would change, because the applicant is relying on these additional units being granted by a building permit. A building permit that was pulled for the back unit. M. Kornitsky stated that they cannot tell when the buildings were converted to residential units after the medical practice ceased. M. Kornitsky stated that he feels comfortable with giving a finding for one residential unit in the front building (96) and one unit in the back structure (96A).

M. Kornitsky then opened up to the other Board members, there were no further questions.

Attorney Shutzer took time to speak with his client.

M. Kornitsky stated to Attorney Shutzer that if he was to withdraw then the Board cannot make a ruling.

Attorney Shutzer and his client withdraw their petition.

MOTION : By M. Kornitsky to accept the request to withdraw without prejudice, D. Doherty seconded, unanimously approved.

## **PETITION 16-28**

203 BURRILL STREET

This is a request for a Special Permit (parking and loading requirements) for relief from the off-street parking requirement. Applicant is looking to open and operate a retail dress shop in the former China Green Restaurant space with 800 sf of retail space and 800 sf of storage area.

Tom Belhumeur, of 100 Galloupes Point, Swampscott, is the owner of 203 Burrill Street. Mr. Belhumeur explained to the Board that the property has been a drug store, a graphic arts studio, a bakery, a pizza and sub shop, and then a Chinese food restaurant. Mr. Belhumeur continued to explain that none of the prior establishments at the property have needed off-street parking.

Mr. Belhumeur explained he is before the Board requesting a Special Permit to forgo the required amount of off street parking. Mr. Belhumeur stated there is two off-street spaces at the property, but it is used for workers.

Mr. Belhumeur stated to the Board the property is becoming a retail women's dress shop.

M. Kornitsky asked if people park in the MBTA Commuter Rail station parking lot? Mr. Belhumeur mentioned that this usually does not happen and that there is on-street parking, and that after 5pm many of the cars disappear.

Mr. Belhumeur mentioned that the owner of the proposed dress shop and applicant, Wanda Mota was present at the hearing in support of the special permit. Mr. Belhumeur also explained that he has gone to the neighbors and there were no concerns.

B. Croft then asked what the hours of operation will be. Ms. Mota stated Monday through Saturday 10am-8pm and Sunday 12p to 5pm.

M. Kornitsky made a motion to close the hearing, A. Rose seconded, approved.

The Board was constituted as all regular voting members.



MOTION : by B. Croft to allow a special permit for off street parking relief, keep the hours mentioned above for a women's clothing and accessories shop, A. Rose seconded, unanimously approved.

## **PETITION 16-26**

63 THE GREENWAY

Seeking a dimensional variance to extend rood 2-1/2 feet to cover patio and top steps to front entrance of residence.  
Continued from the September meeting.

Ross Dipietro the owner and applicant was present. Mr. Dipietro brought new plans which he handed to the Board.

Mr. Dipietro wished to extend the roofline of the home sitting on his property.

D. Doherty looking at the plans and pictures Mr. Dipietro presented to the Board noted that it looked like the work had already been completed.

Mr. Dipietro explained he wants to extend his roofline two-and-a-half feet. A. Rose asks if there will still be 16 and a half feet to the lot line after the proposed extension. A. Rose then explained that a Special permit will only grant 16 and a half feet of setback, but if going more than the applicant would need a dimensional variance, which M. Kornitsky mentioned were rarely granted.

M. Kornitsky then asked if the applicant is looking to use this roofline extension as a cover over the new patio? Mr. Dipietro agreed that he was. M. Kornitsky mentions that this could be a case of self-created hardship.

B. Croft asked if the extension is going to act as to cover and protect the patio. Mr. Dipietro agreed that he is using the extension for this.

M. Kornitsky if anyone in the audience was there for this petition, there was none.

M. Kornitsky stated that the applicant would need a special permit to have only 16 feet of setback. M. Kornitsky then asked if the overhang is new or if it was there before work began. Mr. Dipietro explained that it is new.

M. Kornitsky stated that the Board can give a special permit for the existing overhang.

M. Kornitsky explained to Mr. Dipietro that there are two members of the Board who are fine with what has been previously done, but M. Kornitsky cannot justify giving any approval beyond 16 feet. A. Rose then specified that the deck will be partially covered if the overhang is not extended farther.

M. Kornitsky stated that the criteria in the Zoning Bylaw says there needs to be extraordinary circumstances to issue a dimensional variance.

Mr. Dipietro asked the Board if he is only going to be granted the 16 feet he already has, and not allow the overhang to extend farther? The Board agreed with this statement.

Mr. Dipietro then asked if a dimensional variance is the only way to get relief? The Board state they felt that, that statement was true.

M. Kornitsky made a motion to close the public hearing, A. Paprocki seconded.

M. Kornitsky constituted the voting Board as all regular voting members, excusing B. Croft, and having alternate H. Roman vote in his place.

MOTION : By A. Rose to approve plans as currently submitted with the overhang at the current length, and granting relief to have the overhang set 16 feet set back from the front, but cannot extend further, D. Doherty seconded, unanimously approved.

## **PETITION 16-29**

## **14 BAY VIEW DRIVE**

This is a request for a Special Permit (non-conforming use/ structure) to rebuild a single-family residence (2,640 sf) replacing a structure destroyed by fire on a non-conforming lot.

Attorney Ken Shutzer states that he is representing the home owner, and applicant Stephen Banks.

Attorney Shutzer starts off by explaining the reason why he and Mr. Banks are in front of the Board. On July 3<sup>rd</sup> the home at 4 Bay View Drive burnt down and now the applicant is seeking to rebuild.

Attorney Shutzer states that there is a provision in Town Bylaw 2.2.7.5E which allows the foundation of the home to be pushed forward by 4 feet towards the street, becoming less non-conforming.

Attorney Shutzer explained the new plans propose the setback to go from 8 feet back to 12 feet back, which was downsized from the original plans. Attorney Shutzer mentioned that the home will be nominally lower in height, and be setback two feet in the front, as well as the new proposed home will be slightly narrower.

Attorney Shutzer then mentioned that when he had previously spoken with Swampscott Director of Community Development Peter Kane, and had gone over with Mr. Kane the neighbor's comments on the previous plans.

Attorney Shutzer then stated that it is very difficult to tell with certainty if the proposed house will be larger or smaller, it is known that the new homes foundation will be smaller, and slightly narrower, and pushed back at the same distance as the previous home, maybe a few feet farther back. Attorney Shutzer stated that the grade is now 50% below.

Next, the applicant's architect presented the new plans to the Board.

The first plan showed by the architect is the proposed plan and the former footprint of the home. The architect used these plans to show the changes from the previous home with the proposed. Some of these changes included moving the kitchen addition back in.

Attorney Shutzer stated to the Board that he thought because the foundation is being built smaller, his client did not need to appear before the Board, but is here so that the applicant may receive their building permit. Attorney Shutzer then brought back up Town Bylaw section 2.2.7.5 and the smaller plans and discussed it with the Board.

D. Doherty asked if there were any estimate of the previous house? Attorney Shutzer said that there is none, but is relying on extrapolations, Mr. Banks then mentioned to the Board that he does not know how much larger the new home is going to be.

Attorney Shutzer mentions that bylaw 2.2.7.5 only describes self-demolition or addition, and does not speak on if a house is burnt down. Attorney Shutzer then mentioned that he assumes his applicants issue is referred to in section 6 as the new structure will be more conforming, but will still need relief in the front.

M. Kornitsky clarifies that only some aspects of the new home are becoming more conforming.

M. Kornitsky then opened the floor for those in support.

George Potts, a neighbor to 14 Bay View, but not a direct abutter, mentioned that with the new home being set back farther and becoming narrower, it will be a good fit in the neighborhood. Mr. Potts also hopes the Banks can move back in as soon as possible.

Next, Barbara Connors, of 62 Bay View spoke up and stated she was in support of the plans.

M. Kornitsky then opened the floor to those in opposition.

Judith Golditch of 10 Bay View Drive, a direct abutter on left, and whose home was also lost in the fire that burnt down Mr. Banks home.

Ms. Golditch began by bringing up a google search that showed the original home, and mentioned she is concerned about her house, as the new plans propose the new home will be built four feet closer. Ms. Golditch also mentioned that she did not receive the plans until the night before the meeting and that her attorney was not there to represent her. Ms. Golditch continued to mention that she is nervous about the new home being bigger and that it will be 14 feet longer.

The applicants architect clarified that the new home will be only two-and-a-half feet closer.

Ms. Golditch then requested that the applicant request a continuation so that she may have her attorney present at the next hearing.

M. Kornitsky then mentioned that the Board had previously held talks about general late filing of paper work and how it can make it difficult to review, distribute, and ensure everyone sees the information.

M. Kornitsky mentioned that a strategy about late filing should be looked into by the Board.

Attorney Shutzer stated the reason the plans were filed late was because the applicant received word there was opposition to the plans and had to contact the architect on short notice to put together new plans, plans that Attorney Shutzer mentioned are smaller than the previous, based on the neighbor recommendations.

M. Kornitsky asked if Attorney Shutzer and his client will agree to a continuation? Attorney Shutzer and applicant do not agree.

M. Kornitsky then asked why an abutter was informed the petition was being withdrawn.

Mr. Banks stated that he got word the previous Wednesday that a neighbor was unhappy with the plans, and that throughout the week received word that neighbors were unhappy. On the Friday before the meeting, Mr. Banks stated he used recommendations and a sit-down meeting to work out a plan to make neighbors happy. Mr. Banks continued to

state that on Saturday he met with more neighbors and discussed the plans. Mr. Banks then stated that the plans being presented before the Board encompass the neighbor's recommendations and have what Mr. Banks wants. He then mentioned that he emailed out the plans as soon as he received them.

Mr. Banks then stated to the Board that he and his family have become part of this community and has strong ties with this community. Mr. Banks also mentioned that for insurance reasons, the home needs to be rebuilt in two years. Mr. Banks mentioned that when he heard there were concerns with his proposed plans, he immediately tried to relieve the concerns. He stated the footprint is going to be smaller with the new proposed plan, but that the gross square footage will be a little larger, and that the home might be a little higher as well, but the proposal has the same setback and is the size as the house next to his. To illustrate this, Mr. Banks architect showed the proposed plans.

M. Kornitsky mentioned that there are procedural and legal issues that need to be answered. M. Kornitsky continued to say that he would want to grant a continuance, but that a continuance could cause problems in the future.

The abutters, applicant, and the Board continued to discuss the new proposed plans.

Christine Allison of 18 Bay View Road mentioned she wants to see the Banks move back in, but also wants to see lot survey, locus plan and to have more time to review the new plans.

D. Doherty agreed with Ms. Allison that the hearing should be continued.

Jason Boulder of 11 Bay View mentioned that the new proposal makes the home a third larger.

M. Kornitsky then stated that he is sympathetic to both the owner and abutter, and asked if the applicant will agree to a continuance.

Attorney Shutzer asked if possible to have a meeting before the next scheduled Zoning Board of Appeals meeting.

M. Kornitsky stated the next meeting would be November 16<sup>th</sup>, and that member A. Rose will not be there for it. A. Rose mentioned that he would be open to having a meeting before the next scheduled meeting.

M. Kornitsky stated that the applicant could go first on the agenda.

Attorney Shutzer then stated that the Board had failed to address Town Bylaw section 2.2.7.5.

M. Kornitsky mentioned that he believes that with the new plans the applicant might have to seek a special permit. Attorney Shutzer stated that Mr. Kane thought the proposed plans would be under the same determination.

M. Kornitsky mentioned that he originally thought the applicant would need to seek relief due to the nature of the request. Attorney Shutzer stated that the house burnt down, and now the owner is building new, and the new home will be smaller, Attorney Shutzer then asked what they are to do now? Attorney Shutzer mentioned that Mr. Kane had thought the house would be under Town Bylaw section 2.2.7.3B, which speaks to someone who has purposefully tore their home down.

Attorney Shutzer asked the Board if the home is to be pushed back and made more conforming and smaller, would they need to come back before the Board?

Attorney Shutzer mentioned that Mr. Kane's determination on the issue was different than the Building Inspector's.

D. Doherty mentioned that it would not make sense to move the home around on the lot, which attorney Shutzer stated they could do.

Attorney Shutzer then asked the Board for help on how to read the law.

A. Rose then asked why the owner moved the proposed home back. Mr. Banks mentioned they did this to align with 18 Bay View Drive better.

M. Kornitsky asked if the applicant would continue. After conferring with his client (the applicant) Attorney Shutzer agreed to continue.

MOTION : By M. Kornitsky to accept the request for continuation, seconded by D. Doherty, unanimously approved.

## **PETITION 16-30**

57 ROCKLAND STREET

This is a request for a dimensional Special Permit and Site Plan Special Permit to demolish existing structure and build a new two-family structure 5,802 sf and reduce front setback from 20 ft to 16.5 ft.

Attorney Bill Quinn is representing the owner and applicant, George Wattendorf.

Attorney Quinn stated they are seeking Dimensional Special Permit for a relief with a front setback and a site plan special permit for a structure over 3000 sf gross floor area. Attorney Quinn mentioned there had been some concern over the petition.

Attorney Quinn stated that the applicant has filed for a demolition permit. Attorney Quinn also explained that the home is being built on a very steep grade. Attorney Quinn also mentioned that the neighborhood has other large houses, but there is lots of concern from the abutters about the proposed retaining wall, and the landscape designer and architect are there to answer questions about the concerns and questions.

Craig Bosworth the architect for the home came before the Board to present. Stated that lots of attention had been added to the design of a two-family residence. Mentions the plan is to renovate or demolish the existing home, with the intent to demolish. Mr. Bosworth explains they are looking to maintain the dimensional guidelines on the property, not including the front of the home.

Mr. Bosworth continued his presentation showing the design of the home, starting on the first floor. Mr. Bosworth explained the client wants this home to be used as a retirement home with a smaller unit attached to it and that they will share a three-car garage. There will be a one car garage for the tenant, and a two-car garage for the owners. The style of the home is going to be one-floor living, and mentions a small living area as well for the tenant. Mr. Bosworth mentioned that the design takes into account the great views from the property.

Mr. Bosworth continued to explain that the owners unit will have an oversized deck in the back, and there will be smaller deck as well for the smaller unit. The second deck will be setback and cascaded to provide privacy for the owner's unit.

Mr. Bosworth then moved on to explain the plan for the second floor. There will be an area that would move out to the deck attached to the second floor, which is above the deck below. The second unit will also have a deck above the other deck.

Mr. Bosworth then showed the Board the plans for the basement. Mr. Bosworth mentioned he does not have a solid diagram for the basement. But, Mr. Bosworth continues to explain there will be stair access, with columns for support for the decks on the main body because of grade, also because of the grade a majority of the foundation will be set into the grade, and will not decide if removing the grade or not until they begin excavation. Mr. Bosworth explained the basement will be a recreation and living room area, and an asset to the property.

Mr. Bosworth then switched plans to the architectural maps and plans.

These plans show the front elevation, and slightly more detail accentuating the tenants side. Mr. Bosworth mentioned there will be stone veneer and stone shingles. He continued to state that architecturally speaking, he wishes to represent the waterside of the home. Mr. Bosworth mentioned there will be base level stone pairs and shingled arches, and a simple trim type of deck system. Mr. Bosworth explained that the majority of the living space will be put on the first floor from the street level. Mr. Bosworth stated that the building height from where you would drive a car in to the highest point on the home is 25 feet tall, which is the same as the existing structure, the back height from the back of the property is higher than the front, but still less than 35 feet. Mr. Bosworth then presented the side elevations of the property which showed the chimneys on the proposal, which Mr. Bosworth stated will be stone veneer. Mr. Bosworth also explained there will be arched windows with casing stock.

Mr. Bosworth then turned the presentation over to the project engineer, Peter Ogren. Mr. Ogren explained the proposed home on the property will have a greater side yard setback, but that on the left side, the home will be within 4 feet of the sideline. Mr. Ogren then explained the significant grade on the property and how the architect designed the back of the home with the ability to walk out in the back onto grade.

Mr. Ogren mentioned that he believes the 57 Rockland Street lot is the biggest in relevance to the immediate neighborhood, and the proposed plans propose 29 percent lot coverage. Mr. Ogren explained these maps are the result of going before the Planning Board previously. Mr. Ogren then showed a site plan and an existing conditions map and a more specific locus, which was asked for by the Planning Board.

Mr. Ogren then presented a drainage plan for the project. Mr. Ogren stated that water will not flow towards Rockland Street. Mr. Ogren mentioned there are gutters on the front of the building which discharge in the backyard over the lawn. Mr. Ogren explained because the lawn area is flat, there is a longer time for infiltration to take place. Mr. Ogren continued to explain that there will be a fairly sizable paved area, and a concrete apron for the garage. This area is impervious at the moment, but permeable pavers are proposed, and the results are a reduction in drainage towards Rockland and Humphrey Street.

Mr. Ogren also explained that the footprint of the home will increase in size. Mr. Ogren then handed the presentation off to the landscape designer James Emmanuel.

Mr. Emmanuel began by showing the proposed landscape plan for the property. First, Mr. Emmanuel showed the property from the Rockland Street side, which will have permeable pavers in the parking and driveway area, and

decorative low shrubs to buffer from the street. Mr. Emmanuel then explained there will be a stepping stone path down the side of the property that will wind through the side with plantings. Mr. Emmanuel explained that the idea is to create a flat and usable backyard space, and that the lot and start line is almost 20 feet apart.

Mr. Emmanuel stated there will be terracing on one side of the property, and there will be plantings along the wall. Mr. Emmanuel mentioned that this wall was a point of review with the abutters, and the wall will be four feet lower.

M. Kornitsky asked what the wall is going to be made of.

Mr. Emmanuel explained sedimentary grey blend, and neutral toned and textured, and this wall will be surrounded by plantings. Mr. Emmanuel also showed proposal maps that show there being a fence on top of the retaining wall. Mr. Emmanuel also explained that there will be evergreens on the back side of the home, and that any planting in-front of the wall will be half the size of the wall when planted. It is then mentioned that there is only a 20 foot strip of where the evergreens could be planted.

M. Kornitsky then asked Mr. Quinn about the comments the Board have been receiving on the set back being 16 feet for a space, and what attention has been shown.

Attorney Quinn stated that if the home is to be moved back then it would impede the neighbors view, and is applying to move back the home to provide immediate relief to the abutters. It was mentioned that the plan also shows parking for cars on parallel to the street.

Attorney Quinn then stated that a big car only needs around

Mr. Quinn mentioned big cars will need 16 feet, but mentions he has no documentation of this. Attorney Quinn mentioned that the open space in front of garage will invite people to park there, but their new plans they are presenting have the space being with 18 feet back.

A Rose asked if any abutters had any opposition.

Mr. Ogren (Engineer) stated that if the house is moved back, it will move down the slope. But, Mr. Emmanuel stated that if the home is to be pushed further down the slope, it could possibly increase the size of the retaining wall.

M. Kornitsky asked about what the recommendations from the Historic District. Attorney Quinn explained that recommendations were taken into account, but decided not to change the plans. Attorney Quinn specified that the maps they using are the ones approved September 22<sup>nd</sup>.

A. Rose then brought up the retaining wall and decision made regarding the Hanover property, and the complaints they received. So A. Rose wants to make sure the wall is appropriate.

M. Kornitsky mentioned that it is fair to bring up materials used for the wall. Attorney Quinn asked if he Board had any preferences for the design? M. Kornitsky he believes he would want poured concrete and veneer.

Mr. Ogren then stated that he could possibly look at alternative material for the wall, and that a block system will look nicer than poured concrete.

Mr. Emmanuel said that the wall might not be viewable from the public way, but abutters can see it.

M. Kornitsky then asked what from Humphrey Street will be viewable? Mr. Emmanuel then uses photos to show that very little will be viewable.

D. Doherty then asked about the neighborhood concern over the space in front of the garage. The original plan called for only 16- ½ feet of setback. D. Doherty asked if there is anyway the extra 2 feet can be found somewhere in the home, so it does not cause so much opposition.

Mr. Bosworth stated that they could, but that the person driving will be able to see that they can turn left or right, but mentions that he can discuss with his client.

M. Kornitsky then asked about the view corridor and what changes from the existing to the proposed. Mr. Bosworth then showed the Board the view corridor, and that the home is 10 feet further on one side causing the objection.

M. Kornitsky then asks for anyone in the audience who is in favor.

Jeffery Bollen of 9 Rockland Street is a direct abutter to the property. He mentions that he is in favor, and appreciated the proposed home doesn't go back as far as it had gone in the past, which ruined his view. Then another abutter spoke up in favor of the project, but is concerned about the water draining off the road and concern about the changing topography, but the biggest concern is the drainage flow from the property. The abutter was very nervous about the water flowing downhill.

Mr. Wattendorf then stated that his is looking to flatten the yards, to help mitigate the flooding. He continued to say that he stopped and talked with many of the abutters, and even took pictures in the back of yards in the neighborhood showing the changes.

M. Kornitsky then asked Mr. Ogren to speak on the Drainage Report.

Mr. Ogren states the proposed wall be 15 feet high, and that ledge on the property goes from all the way down. With the new filtration services the water will flow down either to the ocean or through the ground. Mr. Ogren mentioned there is a possibility to put above ground water tanks on the property. Mr. Ogren continued to explain that if the Board is still concerned, then they could maybe put pipes in the back.

A Rose and Mr. Ogren then continued to discuss and explain to each other the drainage report and how to mitigate water on the property.

In regards to the design of the retaining wall, the wall was designed to hold back hydrostatic forces or have little holes in the wall for small filtration. An abutter mentioned to another abutter that some plantings could be used to absorb water.

M. Kornitsky then asked the audience how many were there to speak in opposition. Six people raised their hands.

M. Kornitsky asked the Board if they would like to continue or finish tonight. The Board agrees to move forward.

Tim Donovan of 39 Rockland Street stated that he had yet to see the new plans.



Scott Hilderbrand of 19 Lawrence Terrace, a direct abutter to the south stated that his primary concern is the rather large retaining wall. He is worried the wall doesn't stay consistent with the area and the shear size. Mentioned the degree of the wall will make it feel as if he is living downhill of a dam.

Mr. Hilderbrand then stated that the architect and landscape architect have done a lot of work with the Rockland Street abutters. Mr. Hilderbrand also mentioned he is nervous about the wall and his full glass sunroom beneath the proposed wall. Mr. Hilderbrand stated he liked the idea of a terraced wall. B. Croft asked what looks at now. Mr. Hilderbrand responded that he mostly looks at overgrowth and yews that have overgrown. B. Croft asked Mr. Hilderbrand if he understood the limitations being put on the implementation of the plantings in front of the retaining wall? B. Croft then clarified for the abutter that the plantings must be half the height of the wall when planted.

Attorney Quinn mentioned that there was no problem with the condition about the caliper of the trees and heights.

A. Rose mentioned that there is 20 feet of backyard or a buffer between the stone wall and their home currently.

Next Louise Petersiel of 11 Humphrey Terrace stood up and spoke.

Ms. Petersiel is concerned with the height of the wall, and is the middle home behind 57 Rockland. Ms. Petersiel continued to state the Wattendorfs are nice people and believes the new proposed home will be beautiful and maintained very well she believes. But she continues, she is worried about the wall and wants to make sure there are plantings in front of it.

Mr. Hilderbrand mentions that there is already 8 feet below the property. M. Kornitsky asked if the entire wall could be stepped towards Humphrey Street? Mr. Wattendorf states that he put the wall 20 feet back to give more space for light, and used a photo to show the current view of the existing wall. H. Roman then asked if the full plan for the property has the 20-foot buffer? Mr. Emmanuel confirms that there is. Mr. Wattendorf reiterated that we would continue to work with the abutters.

Mary Bertroff of 56 Rockland Street, directly across from the Wattendorfs. Ms. Bertroff explained she is concerned about her ocean views, the current breeze, and that these views will be blocked. Ms. Bertroff is also concerned about the proposed home being 5800 sf. Ms. Bertroff continued to stated that the view of the ocean from the street will be impacted. M. Kornitsky mentioned that this is bad for some but good for others. M. Kornitsky mentions that the view corridor is opening, to which Ms. Bertroff stated by only 4 – feet. M. Kornitsky explained the applicant could have built a taller structure. M. Kornitsky continues to explain the benefit of opening the view corridor on one side and closing it on the other. Ms. Bertroff reiterated her question about the property being 5,800 sf. Mr. Bosworth explained existing house was/is 5,510 sf, which Ms. Bertroff says is much different than what the town website has.

Asked if he is disputing the Town website information, Mr. Bosworth agrees, he is.

Ms. Bertroff reiterates her concern over the size of the proposed home and the parking. Ms. Bertroff explained how parking on the street currently is very difficult.

Attorney Quinn mentioned they have five spaces which is more than they are required to have.

Ms. Bertroff then asked what the setback from the current property line to building on right hand side is. Mr. Ogren estimated from the side is a proposed 18 feet, and currently 29 feet.

Rick Jakious of 49 Rockland Street, a direct abutter came before the Board to present his concerns. Mr. Jakious's concerns included the Setback, the scope of the project, and the materials being used. Mr. Jakious mentioned he supports the setback variance proposed, that the structure sticks out far. He also supports plans for the setback variance for parking, as he believes the applicants have planned for their fair share of parking. He also mentioned that most of the street, the houses are all tight up against the street. Mr. Jakious then handed a packet to the Board with pictures in it that relate to the proposed retaining wall, and plans on how to mitigate having a large wall as well as different ways to mitigate the grade. Mr. Jakious reiterates his concerns with the materials being proposed, showing in the document materials that are consistent with Swampscott. Mr. Jakious states he would support any addendum to the proposed plans, that makes the materials more natural to the town. Mr. Jakious continues to show pictures of materials consistent with Swampscott, and pictures of the grade. Mr. Jakious concludes by reiterating his support and appreciation for the setback, and wants further conversation on the materials.

M. Kornitsky asks for any more abutters.

An audience member brought forward a letter from abutter Joe Sinatra who could not make the meeting.

A. Rose asked Mr. Jakious about different ways to relieve the wall and the grade. Mr. Bosworth said they had thought up different ways.

M. Kornitsky makes a motion to close the public hearing, A Rose seconded.

M. Kornitsky constitutes board as five original members.

M. Kornitsky relays his thoughts, mentioning that he can see a dimensional special permit for the area being moved off street, taking the existing non-conformity and make it much less, as well as a site plan special permit for a new home that is more than 3,000 sf.

M. Kornitsky then states that in terms of evaluation of the criteria, if it was not for the front set back, the applicant would only be here for the site plan special permit. M. Kornitsky mentioned that there needs to be drainage improvements done to capture some of the water there, and the design and material of the wall needs to be discussed. M. Kornitsky also explained he believes the wall will be a very prominent feature, especially from below, and there needs to be something done to make it more visually appealing.

M. Kornitsky mentions that he would like to grant the petition requests, but asked the Board for their thoughts.

B. Croft agrees, but mentions he has concerns about looking up at the wall and that is was a good point by A. Rose about the 20-foot buffer. B. Croft continued to state that he is most concerned with the size and maturity of greenery which is to be put in and how mature they will be when planted. He continues to say that he agrees with granting the dimensional special permit, id they lower the wall and include drainage improvements.

D. Doherty agrees with the comments and about the proposed home being larger than any other houses in the neighborhood, even though the lot is large, he is afraid the home will look huge.

A. Paprocki agrees with granting the special permit, and wants the setback to be 18 feet, M. Kornitsky agrees with this. A. Paprocki continues to state that he believes because of the mass the wall should be set back, and the materiality of the wall and fencing should be taken into account. A. Paprocki mentions that he is also concerned about the maintenance of the area.

A. Rose mentions he can go either way with the proposed retaining wall, but mentions it is a large lot, but the proposed house looks great.

M. Kornitsky mentions to the applicant that he wished every applicant came in with level of detail the applicant had.

M. Kornitsky stated that it all circles back to material of the proposed retaining wall.

M. Kornitsky asked if you could hide the view of the wall. Mr. Emmanuel responded you need to choose a system for the wall, that segmental walls have certain benefits, such as structurally it allows for controlled drainage, efficient, and inexpensive.

Attorney Quinn stated he has no qualms with leaving up to the planners. The Wattendorfs state they do not want to do that.

Both an abutter and Mrs. Wattendorf mentioned they want to look at greenery from their property.

The Board, abutters, and the applicant discussed the greenery around the wall.

The discussion was based around the conditions regarding the greenery, and a condition to make it so greenery consistent with proposed plan, and the greenery be 50% of the wall when planted.

M. Kornitsky asked Attorney Quinn to write the decision.

Mr. Jakious mentioned that the material of the fence also needs to be taken into account.

Mr. Emmanuel mentioned they would be wrought iron looking aluminum.

M. Kornitsky asked for a motion.

**MOTION** : By M. Kornitsky to approve a dimensional Special Permit and Site Plan Special Permit, with condition, that there be added drainage improvements, including dry wells (approx.. 4 ft diameter dry well) two for added drainage, that the house be set back 18 feet from the roadway, the retaining wall height be decreased by 4 feet from its current proposed height, plantings shown on landscape plan be the actual plantings and be 50 percent of height of the wall when planted, seconded by A. Paprocki, unanimously approved.

## **PETITION 16-31**

**89 GALE ROAD**

This is a request for a Special Permit (non-conforming use/structure) and site plan Special Permit to make additions to the existing single story residence new upper-level of 25' x 49', extend garage by approximately 8', and extend decking of rear porch.

Tony Roossien the architect for the project and the owners (Douglas & Patricia Burden) are present.

Mr. Roossien began by explaining that the home is currently one story, Ranch style home, with approximately 2600 sf and no non-conformities. The lot size is 15,000 sf and the applicant is looking to extend the garage for storage reasons and to get two bays in the garage. The new construction will add 1,200 sf to the home. Mr. Roossien explained to the Board that the petition had already gone through Planning Board Site Plan review and received favorable action. Mr. Roossien continued to explain that the applicant is seeking a Special Permit for their non-conforming lot.

Connie Lewis of 92 Gale Road, across the street from the petition location, was present and addressed the Board. She stated that she did not receive the proposed plans. The applicants responded that they knocked on her door but she was not home, the applicants then submitted letters of support from neighbors.

M. Kornitsky asked Mr. Roossien to explain the proposed plans and work to the Ms. Lewis, which he did.

M. Kornitsky asked if Ms. Lewis had any concerns about moving forward. Ms. Lewis stated she is concerned about a hedge near her property. The applicants said they would be happy to move it.

M. Kornitsky stated that the he believes the relief the applicants are seeking is minor.

The Board agrees.

M. Kornitsky recused himself from the vote.

The Board is constituted as all members except for M. Kornitsky, alternate H. Roman will vote in place.

MOTION : By A. Paprocki to approve the Special Permit and the Site Plan Special Permit for a non-conforming lot for the proposed plan of a second story addition and extending the garage, consistent with the plans submitted. B. Croft seconded, unanimously approved.

Public hearing closed on motion by M. Kornitsky, unanimously.

Meeting closed at 12:30am.

Andrew Levin  
Assistant Town Planner