



TOWN OF SWAMPSCOTT

ZONING BOARD OF APPEALS

ELIHU THOMSON ADMINISTRATION BUILDING
22 MONUMENT AVENUE, SWAMPSCOTT, MA 01907

MEMBERS
MARC KORNITSKY, ESQ., CHAIR
DANIEL DOHERTY, ESQ., VICE CHAIR
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ANTHONY PAPROCKI
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RON LANDEN
HEATHER ROMAN
EMILY STUART

JANUARY 18, 2017 MEETING MINUTES

Time: 7:10PM – 9:44PM
Location: Swampscott Senior Center, 200 Essex Street (rear)
Members Present: M. Kornitsky, D. Doherty, A. Paprocki, B. Croft, H. Roman, A. Rose, R. Landen, A. Rose
Members Absent: E. Stuart
Others Present: Ken Shutzer (Attorney), Charles Patsios (Applicant), Paul Lynch (Attorney), Steve Gadman (Resident), Terry Gadman (Resident), Alice McGuire (resident), Gary Finari (applicant representative), Chris Drucas (attorney), Manuel Bettencourt (Building Inspector), Doug Dubin (Resident), Patricia Cashman (Applicant), Mike Patenaude (Applicant), Ted Doyle (Representative), Craig Bosworth (Architect), Samuel Vitali (Attorney), Andrew Levin (Assistant Town Planner)

Meeting called to order at 7:10PM by Chairman Kornitsky.

MEETING MINUTES

The Board reviewed the minutes from the December 21, 2016 hearing. There were no comments. On a motion by M. Kornitsky, seconded by D. Doherty, the November minutes were unanimously approved.

M. Kornitsky explained to the Board members and audience present that he understood that there were two petitions in front of the Board that would be requesting continuances. Wishing to decide on these requests first before the other petitions for the sake of time and efficiency, due to procedural obligations, the Board waited a short period of time and opened the petitions after 7:15PM.

ZONING RELIEF PETITIONS

PETITION 16-29

14 BAY VIEW DRIVE

Application of KENNETH SHUTZER o/b/o STEVEN P. BANKS seeking a special permit (nonconforming use/structure), dimensional special permit, and dimensional variance to rebuild a single-family residence replacing a structure destroyed by fire on a nonconforming lot. Map 20, Lot 141. *Continued from November meeting*

At 7:15 PM M. Kornitsky opened the hearing for Petition 16-29.

Attorney Kenneth Shutzer, representing the applicant, was present and requested a continuation of the hearing to the next meeting. M. Kornitsky asked if there was any opposition to this request. Attorney Shutzer replied that he had spoken with the attorney representing the abutters, Attorney Robert McCann, previous to the meeting. Attorney

Shutzer explained that his client did not have formalized new plans for the meeting in the amount of time asked for at the previous meeting by the abutter's attorney.

M. Kornitsky then asked if there was anyone present in opposition to the audience, there was none.

MOTION : By M. Kornitsky, seconded by B. Croft, Petition 16-29 was continued to the next Zoning Board meeting, February 15th.

PETITION 16-36

96 & 96A PURITAN ROAD

Application by Patricia Cashman to appeal the findings and order by the Inspector of Buildings to immediately evict any persons living in the rear structure and anyone living in the front building to vacate on December 1, 2016 and any resultant fines in violation thereof.

Attorney Kenneth Shutzer began by stating that he is representing the applicant, Ms. Cashman (who was also present), and stated to the Board that he will be requesting a continuation. M. Kornitsky then stated that he understood there was opposition to the request from the Building Inspector, and held off opening the hearing until the Building Inspector was present.

While the Board waited for the Building Inspector, Petition 15-42 was opened.

PETITION 15-42

12-24 PINE STREET

Petitioner Charles Patsios is seeking a review regarding the sunset provision (6 months) of the use special permit to allow the petitioner the use of storage of vehicles and light motor vehicle services.

The applicant and property owner, Charles Patsios was present, along with Attorney Paul Lynch, who stated to the Board that he is representing Mr. Patsios.

Attorney Lynch began his presentation by explaining that a previous special permit was issued to the applicant on May 18th (2016), after three public hearings. Attorney Lynch explained the special permit allowed for the storage of vehicles as well as light vehicle service. Attorney Lynch then used plans of the property and building to show where the special permit allowed these activities to take place. Attorney Lynch continued to state that there were conditions added on to the May decision, which included restrictions on hours of operation and a "sunset" clause on the decision. The "sunset" clause stated that the applicants must come back before the Zoning Board Appeals after six months and make sure the conditions made in the decision were met and adhered to.

Attorney Lynch explained that his client (Mr. Patsios) has added a new roof to the building, painted the building, and has added electricity. Attorney Lynch stated that Mr. Patsios has put substantial money into the building and that the tenants have complied with the conditions; restricted hours of operation, keeping vehicles in the building, and keeping power-tool use to a certain area as mentioned in the conditions. Attorney Lynch stated that both he and his client have not heard anything from the Building Inspector, and are before the Board to ask to continue the issuance of the special permit.

M. Kornitsky then asks if anyone is present in opposition.

Steve Gadman of 11 Pine Street, an abutter, approached the Board.

Mr. Gadman began by stating that he had to call the police the day after the last meeting (May 18th, 2016) regarding the property. M. Kornitsky asked Mr. Gadman why the police were called. Mr. Gadman explained that the issue revolved around vehicles parking in front of the building. Mr. Gadman then went on to explain that the issue of parking in front of the building is not something that was conditioned by the ZBA but has been in place to make sure building inhabitants do not all park on the street. Mr. Gadman explained that on the particular day that the police were called, a person drove away from the building and had placed a cone in their parking spot. Mr. Gadman then explained that someone from the building had given his wife a hard time and that there was a discussion over the parking. Mr. Gadman then reiterated to the Board that this situation occurred only a day after the Zoning Boards hearing in May. Mr. Gadman then stated that issues with the property lead to an "intolerable summer". Mr. Gadman listed issues that occurred at the property such as; activities happening in the whole building, cars in the parking lot, and a smell from the property. Mr. Gadman explained that a neighbor of theirs sold their home and moved away because they could not take the problems stemming from the property. Mr. Gadman explained that the neighbor had to ask Mr. Patsios if no one could be at the building on days when the home was being showed. Mr. Gadman then also stated that there has been motorcycles present at the property. M. Kornitsky asked if Mr. Gadman had spoken with the Building Inspector, to which Mr. Gadman answered yes. M. Kornitsky then asked if there were any actions taken by the Building Inspector and Mr. Gadman explained there had been none.

Mr. Gadman then explained to the Board another time in which he had to call the police, which stemmed from people swearing at him and his family and that people on the property were staring at them. M. Kornitsky asked if Mr. Gadman knew who the people were, to which a lady in the audience mentioned that the police did come. M. Kornitsky asked if there was a police report, to which Mr. Gadman stated there is none. Mr. Gadman explained that in the conditions there was to be no vehicle work done on the Eerie street side of the property, and the doors were supposed to be closed. Mr. Gadman mentioned that the police explained that the people on the property were working on vehicles and should keep the doors open, to which Mr. Gadman explained the tenants were not even supposed to be working on cars in that area. Mr. Gadman then outlined the hours of operation given in the conditions and also explained the language of the conditions. M. Kornitsky then read the conditions aloud. M. Kornitsky stated that it appears to him from the conditions that no machinery should be used or work done on Sundays. M. Kornitsky then asked Mr. Gadman if he had seen work done on Sundays? Mr. Gadman stated he had. Mr. Gadman then mentioned that as he understood it, the tenants were supposed to only be working on antique cars. M. Kornitsky explained that the decision and from his memory, he does not think the conditions restricted age, but that the predominant work would be done on antiques, but still, limited to light servicing, and that the Board did not have jurisdiction to grant anything beyond the light servicing. Mr. Gadman then mentioned that tow trucks have been at the property at 10pm at night dropping cars off, and that there have been people in the property at 3am in the morning. Mr. Gadman stated that these instances have been disturbing the neighborhood. M. Kornitsky asked if Mr. Gadman had noticed the garage doors opened often? Mr. Gadman said that on the Eerie Street side of the property, yes.

M. Kornitsky then asked the Board if they had any questions. B. Croft asked if there was any evidence to the issues Mr. Gadman mentioned, such as pictures or witness statements. Mr. Gadman stated that he has submitted pictures previously, and that there would have been more neighbors present, but that one had sold their home, and the other had another engagement.

M. Kornitsky then asked about the issues that occurred in the summer. Mr. Gadman explained these issues did not just happen in the summer. Mr. Gadman explained that on Halloween night a car pulled up to the property and was left running, and that it stunk his house. Mr. Gadman mentioned that the cars drive by the home, and then Mr. Gadman explained the on-street parking situation in the neighborhood, that on his side of the street there is permit parking only, but the cars park there anyways. Mr. Gadman then mentioned that he was told the tenants would do what they want,

when they want, and that they have. Mr. Gadman mentioned that he and his wife have been looking at other homes, and that Mr. Patsios should not be letting happen at the property. Mr. Gadman continued to state that he does not know what to do, and that if they Town cannot help, they would have to move because of the disturbances. Mr. Gadman mentioned that the findings by Attorney Lynch would just keep the disturbances happening. Mr. Gadman then stated that what he is asking for is respect, and that they have not gotten any.

M. Kornitsky then asked about on-street parking and if there are limitation posted on the street, and asked if it was for resident only? Mr. Gadman mentioned that on his side of the street there is resident only. M. Kornitsky asked if users occupy the resident and park if parking on the street near the property, in the spots Mr. Gadman earlier explained, if the parking is illegal, and if Mr. Gadman perceives is as a burden do to the intensity of use? M. Kornitsky then clarified his question. Mr. Gadman stated that the parking spaces in front of his home are permitted, and in front of the building the spaces are not marked, and that because the building is so large, and has the potential for many workers inside the building. Mr. Gadman explains these spaces are so that the users are not overtaking the whole street. Mr. Gadman went further to explain that the property has a very large parking lot, and that if there were enough people in the building there is the opportunity to park in those spaces, but this could limit the people of New Ocean Street who park on Pine Street overnight. Mr. Gadman explained the spaces on the side is from the Town trying to control the large parking lot and not having the users take up the whole street.

M. Kornitsky asked Mr. Gadman how many times he has observed cars parked in permitted areas. Mr. Gadman responded that he has seen it happen at least half-a-dozen times. M. Kornitsky asked Mr. Gadman if he had contacted the Police or an enforcement officer any those times? Mr. Gadman responded no, that parking was the least of their worries.

M. Kornitsky then asked if there were any questions from the Board, there were none. M. Kornitsky then asked Mr. Gadman to clarify his last name, which he did.

M. Kornitsky then asked if there was anyone else in the audience who wish to speak in opposition.

Alice McGuire stood and stated that she has lived at 33 Pine Street for over 50 years. McGuire mentioned that she can see Eerie Street, and the doors are opened, and that there are trucks running while the doors are opened. Ms. McGuire mentioned that this has occurred as recently as the Monday night previous to the hearing. Ms. McGuire continued to state that there were three trucks with plows on them, but that these trucks have not been back. Ms. McGuire then stated that these are the worst tenants the building has ever had. M. Kornitsky asks Ms. McGuire if she has made any complaints to the Building Inspector since the permit was granted? Ms. McGuire stated that she had not, but that the Building Inspector had said the neighbors have no rights and that the tenants can do what they are doing in the building. Ms. McGuire stated there is no course of action, that they can keep calling the police department, but that this cannot be the only course of action. M. Kornitsky clarified his previous comments regarding police action.

M. Kornitsky asked Ms. McGuire to clarify the Eerie Street side doors. Ms. McGuire explained that one door was opened for an hour. M. Kornitsky then asked Ms. McGuire about running trucks, to which Ms. McGuire replied they were running inside. M. Kornitsky asked Ms. McGuire if the plow trucks were inside the parking lot? Ms. McGuire explained that they were.

Next to approach the Board in opposition was Terry Gadman of 11 Pine Street. Ms. Gadman began by mentioning directly to Mr. Patsios that the painting of the building does make it look better.

Ms. Gadman then went on to explain that the past two weeks have been better, but that from October 15th to two weeks ago, she has been afraid. Ms. Gadman explained that there have been times cars have been left running in front

of her home and “stunk” the home up. Ms. Gadman explained that when her husband asked the person to turn the car off, her husband was harassed with words she mentioned she would not repeat. Ms. Gadman went on to state that tow trucks come to the property late at night, and she mentioned that she thinks they were there on Thanksgiving. Ms. Gadman then asked how the Town could allow for these issues to occur. Ms. Gadman stated that there was a police officer who has come and watched the property to make sure everything is OK, and continued to explain other harassment she has seen. Ms. Gadman mentioned there have been parties in the parking lot over the summer, and that a lawn mower was driven around for hours. Ms. Gadman reiterates that she has dealt with and witnessed many disturbances and harassment. Ms. Gadman stated that she has provided pictures before, and did not bring any physical printed out copies of the photos, but does have lots of photos and videos on her phone. A. Rose asked if the Police has observed anything when they observed the property? Ms. Gadman explained that she did not know. Ms. Gadman mentioned that the neighbors who moved, were much more on top of the disturbances. Ms. Gadman then stated that she wished that it could work out fine, but doesn’t know if it can. Ms. Gadman stated that she does not want to move and that she really likes the area.

M. Kornitsky asked if there were more questions, there were none. M. Kornitsky then asked if there was anyone in the audience who also wish to speak, there was none. M. Kornitsky then asked Inspector of Buildings Manuel Bettencourt for his observations regarding the complaints.

Mr. Bettencourt began by explaining that during the last year there were two different entities that occupied a section of the building on the property. Mr. Bettencourt explained that the Spiro Contractor were on the Eerie Street side, and that the car club was on the other. Mr. Bettencourt stated that he believes there are discrepancies over who is causing the issues.

Mr. Bettencourt stated that he had spoken with the car club and that they have not been busy. Mr. Bettencourt went on further to explain that Spiro has left the property and that he has not heard much since then. M. Kornitsky asked if Spiro had received an occupancy permit, as well as if Spiro needed zoning relief, or could operate at the property by right? Mr. Bettencourt explained that his determination decided there wasn’t, and that the area Spiro occupied has been empty since November. Mr. Bettencourt continued to explain that most of the complaints stem from the Eerie Street side, but the Eerie street side is where the contractor was previously, and now they are gone, and there has not been many complaints.

M. Kornitsky asked Mr. Bettencourt if he had noticed any violations of the conditions laid out in the decision? Mr. Bettencourt mentioned that there was once a truck in an inappropriate spot, but that Mr. Patsios moved it. Mr. Bettencourt went on to mention that his office was called regarding a complaint of auto-body work being done. Mr. Bettencourt explained he drove to the property and only found a man watching TV in the garage, and that he witnessed no auto body work being done.

D. Doherty asked Mr. Bettencourt if he inspected the property when he was called. Mr. Bettencourt replied that yes, he had, and explained the person was at the property hanging out watching TV, and that he found no conclusive evidence there was work being done. D. Doherty asked Mr. Bettencourt how long it had taken him to travel to the property after receiving the call. Mr. Bettencourt replied that it had taken five minutes. Mr. Bettencourt also mentioned that he called the complainant back and explained what happened.

M. Kornitsky asks if the Board has any more questions for Mr. Bettencourt, there were none. M. Kornitsky then asked for Attorney Lynch’s response.

Attorney Lynch mentioned that many of the issues and complaints noted stemmed from the Eerie Street side and that this side has nothing to do with the special permit granted for the access from the Pine Street Side, for its present use for the car club. Attorney Lynch mentioned that it seems that the issues and incidents raised, which he states he or his client did not know about, stemmed from the Eerie Street side, where Spiro had been located. Attorney Lynch then explained that Mr. Patsios did not have control on the actions of Spiro, because Mr. Patsios rented that area of the property to Mr. Orne (the former owner of the property), who then sub-letted the property to Mr. Spiro.

Attorney Lynch explained the activities that are happening on the property are in the realm of the special permit for the Pine Street side they received, and there have not been any problems. M. Kornitsky then read the conditions and mentioned that the conditions mentioned 3,500 feet of space being used for vehicles and there was a plan that showed this area. M. Kornitsky then presents the plan from his files, and mentions that he sees 3,890 feet and the doors on the Eerie Street side. Attorney Lynch and his client, Mr. Patsios then take a minute to discuss. M. Kornitsky then off of the description by Attorney Lynch and Mr. Patsios drew on the map the areas specified and their specified uses and showed the Board.

Attorney Lynch then re-approached the Board, and showed on the plans the parts of the property used by the car club, and the part that was used by Spiro. M. Kornitsky and Attorney Lynch discuss this. M. Kornitsky asked about another section of the property. Mr. Patsios explained that the former owner of the property, Frank Orne operates in that area, and that he has a special permit to operate his HVAC company there.

Attorney Lynch then explained that he has police reports for the property and neighbors, and that he understands there is animosity, but mentioned he did not want to make it part of the record. Attorney Lynch then reiterated that the complaints heard from the neighbors revolved around the period of time Spiro occupied part of the property, and that his client had met the conditions set forth in the decision. M. Kornitsky then reread the decision and what was allowed with the conditions. M. Kornitsky explains that if the Board at this meeting reserves the right to revoke the special permit, they could then add conditions, modify the conditions or lessen the conditions, and that this is his understanding from the previous decision. Attorney Lynch then explained that the Building Inspector has received calls about the property, but that they have been in regards to the Eerie Street side.

Mr. Patsios mentioned to the Board that he has installed security cameras at the property. Mr. Patsios explained that he received phone calls about a specific three-day period in which the tenants were supposed to be in violation, and Mr. Patsios showed the Building Inspector the tapes and proved the complainant wrong. Mr. Patsios continued to explain that he can show footage regarding the complaints.

Doug Dubin, a member of the car club stated to the Board that in the past six-months there has been a very low impact use with the building. Mr. Dubin explained that in the past six months he might have been at the property maybe 30 hours. Mr. Dubin then reiterated that there has been very little use. Mr. Dubin then named the cars that are currently at the property. M. Kornitsky asked Mr. Dubin how many members are there, Mr. Dubin replied there are three including himself, and then named the members, and explained Mr. Patsios has some vehicles there as well.

Mr. Dubin again, reiterated that there has been a very low impact use of the property.

M. Kornitsky asked if anyone else is occupying the property, and Mr. Dubin explained there was another person who was helping him work on his vehicle. B. Croft asked if Mr. Dubin has had any interaction with the neighbors? Mr. Dubin explained that he tries not to speak with the neighbors. B. Croft then asks again if Mr. Dubin has had any interaction with the neighbors, Mr. Dubin replies that he has not.

B. Croft asked Mr. Dubin if his antique car was permanently at the site or if it can drive. Mr. Dubin explained some of the cars there drive, some don't, but that as for as himself, he has a clicker for the garage and drives his vehicle into the garage, then shuts the garage. B. Croft asked if he leaves his truck outside, Mr. Dubin, responded that very rarely he does. B. Croft then asked Mr. Dubin if ever parks and leaves his car running, Mr. Dubin replied no. B. Croft asks if Mr. Dubin if he drives an antique truck there or modern truck and what kind, Mr. Dubin responded that he drives a brand-new Silverado that he parks in the parking lot. Mr. Dubin then told the Board about an instance involving the property that had happened earlier that day, involving him parking lot, grabbing a tool, then leaving.

Mr. Patsios then explained that Pine Street does have a residential side, and that the abutter who spoke earlier, drives a vehicle that must be parked not on the Pine Street side, because it is commercial.

Mr. Dubin stated to the Board that there are T parkers, and Mr. Patsios reiterated that a majority are commuters.

Mr. Patsios explained to the Board that he has looked into alternative uses of the building, such as a bakery. Mr. Patsios then stated that the operation of a bakery would have a much different impact on the neighborhood then currently. Mr. Patsios explained how the bakery would be open early for workers and operations and delivery trucks would be entering daily.

Mr. Patsios then went on to state that his property use is not that of operating a business, but doing only what is allowed in the permit previously granted. Mr. Patsios then reiterated that he has cameras set up on the property and has videos with timestamps. Mr. Patsios then mentioned that it is not a question of who is there, because the cameras will tell you.

B. Croft then clarifies a question he had asked earlier regarding the conditions, B. Croft explained that there seems to be concerns heard from the neighbors on the parking. B. Croft mentioned that he is not concerned with the type of vehicles parking but with where the cars are being parked, and is concerned with how the property is interfering with the neighborhood. B. Croft states he does not have concerns with the use of the property, and stated that he believes the Board isn't concerned on that either. B. Croft stated that he believes the Board to be concerned on the conditions that were imposed, and if they are still being complied with.

Mr. Patsios then asked the Board for clarifications on the conditions, B. Croft reads the condition to Mr. Patsios regarding parking.

Attorney Lynch mentions to the Board the he thinks the intent was, during the previous discussions, to make sure vehicles being worked on were not parked outside, so there would not be a plethora of unregistered cars the club was using, were not parked outside. Attorney Lynch went on to mention that the building has a parking area for workers and visitors to park, but not to store vehicles, which as Attorney Lynch stated, is not happening.

M. Kornitsky mentions that in the meeting minutes from the original May 18th, 2015 hearing (former ZBA member) Harry Pass had made comments on the conditions. M. Kornitsky then read the comments and conditions. A. Rose mentions that is you were to drive your car up and park your car, then he is not concerned with regular cars, the issue is with the classic cars being left outside, unregistered.

M. Kornitsky asks if any Board member has any more questions, there were none. M. Kornitsky then constituted the Board as the five regular members (D. Doherty, A. Rose, B. Croft, T. Paprocki, and M. Kornitsky).

B. Croft then mentions that a member of the audience has another comment.

Mr. Gadman approached the Board again and explained that Mr. Spiro has a car in the club and explained an issue that had previously happened regarding members of the car club working on cars in the parking lot.

M. Kornitsky asked when this incident had occurred, and Mr. Gadman explained, over the summer. Mr. Gadman then continued to state that two weeks prior to the meeting Mr. Spiro had his car at the property. M. Kornitsky asks if Mr. Gadman has seen Mr. Spiro with his car there, Mr. Gadman stated it was his construction vehicles. M. Kornitsky asked Mr. Patsios if Mr. Spiro still is at the property. Mr. Patsios invited the Board to come and look at the property, and then stated that no.

M. Kornitsky then mentioned that in the original language it mentioned, no contractor yards allowed, and then asked Mr. Patsios how Spiro was able to even operate at the property. Mr. Patsios explained that Mr. Spiro sub-leased space from the original owner, Frank Orne, and who does have a special permit for a HVAC operation, which is properly licensed by the board and has been there for 30 years.

A. Rose asked if there is any difference between an air conditioning business and a contractor yard, and mentioned he does not think they are the same, M. Kornitsky agreed with A. Rose. A. Rose and M. Kornitsky then discussed the characteristics on what constitutes a contractors yard.

H. Roman asked if the rights transfer to the sub-letter? M. Kornitsky explained if the use is barred from the property by their (the Boards) decision then there is not right to conduct that use.

Attorney Lynch then clarifies that during the period of time that Mr. Spiro was there, he was parking his trucks inside and that there was no storage of material in the yard. Attorney Lynch stated that someone had gone to the Building Inspector, and that the Building Inspector was not sure on if the property was a contractor's yard or not. In the interim of this time Attorney Lynch explained that Mr. Spiro decided not to file a special permit and then vacated the premises.

Mr. Gadman then approaches the Board with pictures from September 5th of Spiros trucks on the site, while A. Rose and Attorney Lynch discussed the timeline of events regarding Mr. Spiro.

M. Kornitsky then closed mentions that he will be closing the public hearing.

Mr. Gadman then approached the Board with pictures of a truck parked outside of the property for a whole weekend, which said Spiro Construction, which Mr. Gadman stated was contradictory to Attorney Lynchs statement that the trucks were parked inside. Mr. Gadman then asked that if the property was sub-leased by Mr. Orne, then shouldn't Mr. Bettencourt have known about it? M. Kornitsky then mentioned that there were questions about that, and welcomed Mr. Gadman to show the other members of the Board the photos.

Attorney Lynch explains the truck was Spero's, and that it has nothing to do with the special permit. M. Kornitsky then stated that it is up to the owner to make sure that they are compliant with the special permit they are granted. Attorney Lynch then stated that there were no violations, and that the owner has not been cited for any violations. M. Kornitsky then explained that this is "sunset" review and that if one of the conditions were that there was to be no contractors yard, then they will hear and see evidence showing the contrary. Attorney Lynch then stated to the Board that Spero is totally gone now from the property. Attorney Lynch stated that the Building Inspector decided Spero would need a special permit, but did not cite them, because Spero was leaving, and that they did not intentionally violate the bylaw.

M. Kornitsky motions to close the hearing, hearing closed. M. Kornitsky then invited discussion and comments from the five regular members.

M. Kornitsky explains that if there is a decision to continue the relief for the car club, then he would restrict access to just the Pine Street single overhead door, to which Attorney Lynch stated that, that is the way it has always been. M. Kornitsky then continued to explain this would be done so there would be no issue with cars coming from the Eerie Street side. M. Kornitsky used the map of the property and building to show the Board, how they could tighten up the conditions.

R. Landen asked for clarification on the result if the Board was to say there is not a violation and asked if the “sunset-clause” goes away, would the permit become permanent? M. Kornitsky explained that the Board has the ability to extend, revoke, or amend the conditions on the special permit. M. Kornitsky then explained the “sunset” provision was the Board reserving jurisdiction over the special permit with full authority based on the experience that happened during the six-month period to, based on testimony, decide if there was a condition missed or if there is something else the Board must do, such as revoke the special permit.

M. Kornitsky then stated that he believed if the special permit continued then he would add a condition added to limit the car club space and to try and address the outside parking and clarify it. M. Kornitsky mentioned he was unsure of what other conditions to be added. A. Rose asked how long should the decision be reserved for, and asked if it would be another six-months, to which M. Kornitsky replied it would be for six-months. A. Rose then asked if the Board should add a condition that there be no contractor yard usage, to protect from certain hypothetical situations occurring. M. Kornitsky then stated that he saw that there be no contractor yard operated on the entire property, no matter on who it is or who sublets the property. A. Rose and M. Kornitsky then discuss the language and proposed result of the added condition.

T. Paprocki then asked whose jurisdiction is parking? M. Kornitsky explained that the permit parking would be the only parking issue the Board has jurisdiction on.

M. Kornitsky mentioned that there is parking allowed on the property. A. Rose mentioned his thoughts regarding what the Zoning Board could enforce in regards to parking regulations. A. Rose then explained different possibilities of what could be done with the property. B. Croft then stated that it seems as if there are two big issues, both of which are outside of ZBA jurisdiction, and that it seemed like personality of users, both neighbors and tenants and enforcement of parking restrictions. A. Rose then explained his thoughts on the rights of the owner.

B. Croft stated that he had not heard or seen anything, given the original conditions, that did show a violation of the conditions originally given

M. Kornitsky mentioned that the hours which tow trucks would be allowed could be added in the conditions. A. Rose then stated a hypothetical statement with regards to limiting tow trucks on the property. M. Kornitsky stated that if the tow truck issue continues, and when the petition is in front of the Board again for a review, the Board could possibly decide on something different.

M. Kornitsky also mentioned that the doors on the Eerie Street side of the property has cause issues, but will restrict access to garages on Pine Street side.

MOTION : By M. Kornitsky to extend the special permit review to the September 2017 (originally set as 6 months but A. Rose asked to extend it through the summer) meeting with the same conditions and adding that: No two truck drop-offs except during the permitted hours, the car club shall only occupy the portion of the building which fronts on Pine Street, there will be no access by the car club from Eerie Street (D. Doherty asked if there was access to the garage from Pine Street, Attorney Lynch stated there was, D. Doherty asked if there was garage doors, again Attorney Lynch stated yes), there will be no contractor occupying the property, all occupants shall use the parking lot (Asked to be added in by D.

Doherty), and visitors (which was asked to be put in by T. Paprocki), can park in the parking lot on Eerie Street and shall not idle cars in the lot, no unregistered vehicles should be left outside (stated by A. Rose), even in the parking lot,

T. Paprocki asked if this was in addition to the original conditions? M. Kornitsky explained that the original conditions that were not amended will remain. M. Kornitsky asked the Board if there are any more conditions to be added, there were none.

Seconded by A. Rose, unanimously approved.

PETITION 16-36

96 & 96A PURITAN ROAD

M. Kornitsky begins by asking if Attorney Shutzer will be seeking a continuance, and asked Mr. Bettencourt to step forward.

Attorney Kenneth Shutzer, who is representing the applicant Patricia Cashman (who was also present), responded that yes, he and his client will be seeking a continuance.

Attorney Shutzer explained the reasons why he is requesting a continuance. Attorney Shutzer stated that he and his client originally filed under an "Request of Determination" regarding the Building Inspectors enforcement order. Attorney Shutzer explained that he and his client received a citation to appear in District Court, which they attended the Wednesday prior to the hearing. Attorney Shutzer stated that Judge Jean Sturwalt neither denied but mentioned will but that will let the Town dismiss it or Judge Sturwalt will put it in a drawer. Attorney Shutzer stated the letter stated that tenants under their lease be evicted by his client. But Attorney Shutzer explains to the Board, his client is not the owner of the property but that she is a limited partner, but the letter was brought against Ms. Cashman directly. Attorney Shutzer mentioned that since the last hearing, a person has come forth with an offer on the property and there is a signed "purchase and sales" agreement, with a contingency that they make application for zoning relief for an independent living congruent over 55 facility.

Attorney Shutzer mentions that he had talked with Director of Community Development, Peter Kane and that the idea proposed by the person who offered on the property matches the master plan. Attorney Shutzer then mentioned that Attorney Chris Drucas is present, and that he represents the individual who made the offer. Attorney Shutzer explained that he has lots of evidence on why the enforcement order is illegal, because Attorney Shutzer stated the letter is unenforceable and that they do not have the authority to evict people in the three weeks that was provided. Attorney Shutzer also mentioned that the "meat" of the enforcement order has been denied by the district court. Attorney Shutzer then stated that there is an outcome which meets the needs of the Town by providing more housing, and the independent living provision provides for multiple structures on one lot. Attorney Shutzer stated that he and his client have everything in order and that they wish not to be combative with the Building Inspector, despite Attorney Shutzer believing the wrong party has been identified, it is an unenforceable order, it was not first recorded at the registry of deeds, there is a provision in the enforcement order that it first be vetted by the Board of Selectmen before Town council is invited. Attorney Shutzer explained that he would rather not go into detail on any of the issues that he just mentioned.

Attorney Shutzer explained that if he and his client were granted a continuance then they would likely withdraw the application and the Board can approve the independent living use, which there is a provision in the Bylaw to allow it.

M. Kornitsky clarifies that a continuance would be based on the fact that the applicant has a purchaser and that the Board would entertain a petition from the purchaser in the future. M. Kornitsky then explained that he would like to get the procedural matter of voting on a continuance done first.

M. Kornitsky then asked Mr. Bettencourt to clarify his thoughts on why the continuance should not be approved.

Mr. Bettencourt began by stating that during the October ZBA hearing, Attorney Shutzer openly admitted that there were five units between the two buildings. Mr. Bettencourt then explained that based on his determination and the Board's findings, Attorney Shutzer withdrew the petition. Mr. Bettencourt explained that he sent the petitioner a notice dated the end of October, Attorney Shutzer then interjected that it was dated November 4th. Mr. Bettencourt explained that he gave roughly a month to vacate the property, Attorney Shutzer then interjected again that it was three weeks. Mr. Bettencourt explained that there was nothing about a purchase and sales or anything with permits for the work that was done. Mr. Bettencourt then explained that he sent Ms. Cashman the letter because she is listed on the application as the petitioner, and because she is the individual who came forward and whom Attorney Shutzer was representing for the proceedings, and that is why she was sent the citations. Mr. Bettencourt continued that they (the Town and the Petitioner) had gone to court the week prior and that the magistrate was unwilling to do anything because of the open case of the hearing happening currently, deciding on the continuance.

Mr. Bettencourt went further to explain that if the Board was to find in favor of the Town (not approving the continuance) then that would determine the next steps for the Building Department.

M. Kornitsky asked Mr. Bettencourt if he agrees or disagrees with the Zoning Board issuing a continuance? Mr. Bettencourt explained that he disagrees because even though there is a purchaser, that if the applicant argued they cannot evict someone during a lease, what makes him (Mr. Bettencourt), think will happen if the property is sold, where there is a lease for three more years, what will happen in the illegal apartments where nothing has been inspected for three years. Mr. Bettencourt requested that Mr. Shutzer present his case, and to have the Board decide on whether it is a legal five unit or if it is not. Mr. Bettencourt explained that if found illegal then the petitioner would need to be asked to remove the tenants by finding them housing or breaking their lease. M. Kornitsky, stated that this is beyond the ZBA's jurisdiction and clarifies the ZBA's jurisdiction to his understanding on the petition. M. Kornitsky stated the jurisdiction of the Board is to determine if Mr. Bettencourt had exceeded his authority under the Bylaw in his determination.

M. Kornitsky then asked Mr. Bettencourt if he opposed the continuance, which Mr. Bettencourt answered yes. M. Kornitsky then stated that it sounds as if Mr. Bettencourt wants the argument of the continuance heard because there is no change in the issue potentially even if the property is sold, Mr. Bettencourt agrees.

Attorney Shutzer stated to the Board that there was an earlier request in front of the Board from the property to have the Board vote and legitimize based on any number of theories. Attorney Shutzer explained that he did not feel that his client was going to be granted relief, so they withdrew the application and there were no findings.

Attorney Shutzer explained that the basis of this new request is about the efficacy of the enforcement order. Attorney Shutzer then read the issues with the enforcement order, which included; evicting the tenants in three weeks and fines that now exceed over ten thousand dollars. Attorney Shutzer explained that these are issues that Millennium Partnership is going to have to decide how to handle. Attorney Shutzer stated that as a result of what has occurred the

Partnership is under agreement now to sell the property at approximately \$100,000 less, because the only way to sell the property is under the independent living provision of the Bylaw. Attorney Shutzer then explained that he is not asking Mr. Bettencourt to forgo any of the Town's rights. But Attorney Shutzer stated, insofar as the enforcement order is limited to, the specifics of a \$300 a day fine (which Attorney Shutzer explained has been addressed by another forum), the eviction of a tenant within the three week period which was the predicate for the \$300 fine, which the Board does not have the ability to do or does Attorney Shutzer he explains. Attorney Shutzer then stated that he does not see a benefit of hearing the petition rather than approving a continuance. Attorney Shutzer stated that he does not see any benefits to the Town, which he stated acquired legal-council at the hearing in the Clerks office, which Attorney Shutzer stated he did not think was necessary. Attorney Shutzer continued to state that he did not think the Town is gaining anything by not approving the continuance, because the petition will be withdrawn.

A. Rose Attorney Shutzer asked if the tenants should never be made to leave because there is a Purchase and sales or is it just a function of the time frame laid out in the enforcement letter?

A. Rose and Attorney Shutzer then discussed the time frame of the eviction.

Attorney Shutzer states that residential landlord matters are tough, especially when there is no breach of lease and the tenant is timely on their payments.

A. Rose asked Attorney Shutzer if he is objecting to the immediacy of the order or the fines.

M. Kornitsky then explained that he wishes to get the procedural issue of granting a continuance or not out of the way first.

M. Kornitsky constitutes the Board as the five regular members, then asks if any members have thoughts to add. A. Rose asked M. Kornitsky to clarify the situation, to which M. Kornitsky did. M. Kornitsky explained that the Board can entertain the merits of the application tonight, or grant a continuance and there could be a new petition in front of the Board in a few months regarding the independent living facility. M. Kornitsky also stated there is an issue of the tools the Town would have available to enforce the order if the petition is continued, which would stay the action.

A. Rose explains that he sees the issue with this application as two different things and explains his thoughts on the petition to the Board. A. Rose explains that it seems the property was put on notice by the Building Department that there were illegal apartments on the property, therefore they haven't been inspected for however long, Attorney Shutzer interjected that they had been inspected and had paperwork regarding them (the inspections). A. Rose then continued that it seems as if the Board is letting a violation continue, A. Rose then clarifies that he did not want to use the word violation. A. Rose then stated that the petitioner withdrew the previous petition and the property is a single-family house. A. Rose reiterated that he sees this as two different issues, and then stated that he agrees with the Building Inspector that the tenants must be out. A. Rose explained the difficulties of a time frame with evicting the tenants as well as explained that the tenant can take the landlord to court. M. Kornitsky stated that what happens after the eviction is outside of their (the Boards) jurisdiction. A. Rose stated that this is different that stating the petitioner has someone who is going to buy the property and the tenants just get to stay and the five units, which A. Rose states many agree shouldn't be there, stay. Attorney Shutzer interjected that he does not think that what A. Rose stated has been determined, M. Kornitsky reiterated that the Board is only discussing the procedural issue of granting a continuance at the moment. A. Rose then reiterated his points on the units currently on the property and the issues at hand.

B. Croft mentioned that the most direct way to look at the petition and situation, like A. Rose mentioned, is that the issues are separate. The two issues are whether or not to continue or not, and if not, then need to take up the merits of

the case, if the Building Inspector exceeded his authority. B. Croft and M. Kornitsky then clarified the next steps of the appeal process in court.

Attorney Shutzer then stated that the issue of the fine has already been addressed in district court. Attorney Shutzer then reiterated that the enforcement order dealt with eviction. Attorney Shutzer then began to explain a certain aspect of the petition, when M. Kornitsky stopped him and explained if the continuance is granted then Attorney Shutzer would be able to present the information he would want.

M. Kornitsky clarified that a continuance can be granted with a 3-2 vote. D. Doherty stated that he agrees A. Rose and doesn't see why the merits should not be heard. M. Kornitsky explained to Attorney Shutzer and his client that the Board has the three members it needs to hear the merits.

M. Kornitsky then asked the Board to take a vote on the continuance and constituted the five regular members.

MOTION : by D. Doherty that the Board, based on the procedural issue regarding a request for continuance, Seconded by B. Croft, unanimously approved.

M. Kornitsky then stated that it was 5-0 to proceed with the merits of the case and opened the floor to Attorney Shutzer.

Attorney Shutzer mentioned that he had alluded earlier to the, what he perceived to be the flaws in the eviction notice. Attorney Shutzer went on to explain the original application to legitimize the five units was withdrawn because it was apparent the Board would not condone it. Attorney Shutzer explained that he had building permits for kitchens on the property but could not identify which unit they were in. Attorney Shutzer went on to explain the units on the property have been rented out for 28 years, and mentioned that three building inspectors over this time who have been involved in granting building permits related to the property. Attorney Shutzer also stated that there were numerous plumbing permits as well. Attorney Shutzer then showed the Board the property's accessors card which showed two units in the front, three units in the rear. Attorney Shutzer then mentioned that the accessors information had been on file since before this Accessor took over. Attorney Shutzer explained that permits previously obtained were obtained to provide the Town Building Inspector with information about what was going on the property.

Attorney Shutzer stated that the legitimacy of that is not the issue currently in front of the Board, but that this issue regards the forcibility of a condition in the Bylaw. Attorney Shutzer then handed the Board the documents from the Accessors office, which Attorney Shutzer mentioned he highlighted the unit numbers on them. Attorney Shutzer stated that as a result of the permits granted, leases were drawn with the Millennium Realty Limited Partnership for the property. Attorney Shutzer then stated that Ms. Cashman is an emissary, a limited partner, and this was done by her now deceased brother who ran the Puritan Medical Center, which the property was originally. Attorney Shutzer mentioned that Ms. Cashman might be the person who goes with him to hearings but that the appropriate party is the owner of the property. Attorney Shutzer then went on to mention that on the unofficial property card the owner is noted and that he has a copy of the deed if need. Attorney Shutzer stated that on the November 4th letter from the Building Inspector, regarding the use of the units, the letter mentions the 1965 application for zoning relief, which Attorney Shutzer explains was earlier presented to the Board during the October 2016 hearing. Attorney Shutzer stated that the petition has a particularly brief decision, but what is important in that decision is that it was not characterized by the Building Inspector a reversion to any particular use. Attorney Shutzer then read from the petition that said use permit, (which Attorney Shutzer interjected was from 1965, which only dealt with at that point the back building, not the front) is to end when Doctor Edward L. Cashman ceases the practice of medicine.

Attorney Shutzer then stated that when Mr. Cashman ceased to practice medicine, the use permit, to use the property as a medical facility, for the rear building, ended. Attorney Shutzer then stated that there were two permits granted in 1965, a building permit, which Attorney Shutzer mentioned is not the subject of this petition and went on to explain that the building permit enlarged that building from a carriage house which had a tenant on the second floor, and allowed for the introduction of the building to medical use. Attorney Shutzer stated that the order did not revert to anything, and was unsure what it would revert to, because it never had a use, prior to the use being granted in 1965 when the building permit was allowed. Attorney Shutzer then reiterated that the decision stated that at the cession of the medical practice the building could not be used, which was then super-ceded by a 1984 decision. Attorney Shutzer then stated that the suggestion that the 1965 decision reverts back to residential use is not part of, nor ever stated as part of the 1965 decision that Mr. Bettencourt alludes to, Attorney Shutzer explained.

Attorney Shutzer then explained and read to the Board what the enforcement letter demanded Ms. Cashman to do. This entailed Ms. Cashman immediately evicting the tenants in the back building or the front, not including herself and that the letter was addressed to the owner. Attorney Shutzer then stated that Ms. Cashman does not live at the property and is also not the owner. Attorney Shutzer then read the letters language regarding the consequences regarding failure to comply. Attorney Shutzer then explained to the Board what had happened during the court hearing recently regarding the property. Attorney Shutzer explained that Millennium Limited and Ms. Cashman do not have the authority to pick up somebodys property and throw them out. M. Kornitsky then asked for Attorney Shutzer's thoughts on a hypothetical question regarding the situation.

Attorney Shutzer went through the steps of an eviction with the Board, including that only a judge has the authority to evict, and that tenants have unquestioned authority once they have rights on the property and rent is taken, then it is up to the court to evict. Attorney Shutzer suggested that a Notice of Quit could be sent, but that this was not asked for. Attorney Shutzer then explained that a Notice to Quit, is an introduction to summary process, and that no judge would evict these people. M. Kornitsky stated that he agrees with this.

Attorney Shutzer states that the reason for the application was the Building Inspectors order was unenforceable, and that Ms. Cashman is not the owner of the property. A. Rose mentioned that this goes back to the same thing as before, that it is difficult to get residents out in three weeks, and mentions the purchase and sales agreement is a "red herring" in the delay of if Ms. Cashman owns the property. Attorney Shutzer asked A. Rose why he chose to call it a "red herring". A. Rose stated that in simple terms the Board recognizes the petitioner cannot comply, and it has nothing to do with if their able to sell or not. A. Rose mentions the issue is the Building Inspectors determination that the property owner cannot have tenants on the property, even if there were many Building Inspectors beforehand.

Attorney Shutzer then cites Town Bylaw 40 A section 7, and reads this sections language regarding statute of limitations. Which states, that if the Building Inspector makes a mistake, then if six years have elapsed and if they file at the registry of Deeds on this specific parcel, they cannot go forward because there is a statute of limitations. This is done, Attorney Shutzer explained to protect entities such as Millennium Realty Trust from errors, which Attorney Shutzer stated he does not know if there were errors or not.

H. Roman then stated that the Building Inspector had never signed off on anything that had shown five kitchens, Attorney Shutzer clarifies that he said two.

Attorney Shutzer explained to the Board that the home was originally constructed in 1863 residential home in the front and a carriage house in the back, which Ms. Cashman interjected was a garage. A. Rose stated to Attorney Shutzer that this is all the property was zoned for and explained that he did not want to litigate the zoning issue. Attorney Shutzer .stated that what he is trying to explain is that there is a term "pre-existing nonconforming use". Attorney Shutzer then

explained and clarified his argument to the Board regarding use and zoning. Attorney Shutzer also stated that the use of the medical center has been lost, and that the use for the medical center was a “use-variance”, which according to Attorney Shutzer are not nonconforming uses, Attorney Shutzer then went on to explain nonconforming uses.

A. Rose states the on the rear building, upon Mr. Cashman’s death, the use variance ceases to exist, and it reverts back to what the zoning originally was, and you can’t put in a nonconforming use, which Attorney Shutzer stated was a use variance. Attorney Shutzer and A. Rose discuss the issue of use on the property. R. Landen asked what the previous use was. Ms. Cashman says a garage and an apartment above it since 1951. Mr. Bettencourt then stated there are three units in the back.

Attorney Shutzer then explained that the uses in the back of the property, on the second floor there have been a pre-existing use for residential purposes since the structure was constructed in 1863. Attorney Shutzer then stated that on the first floor, the garages and the addition built in 1965, on that addition it did not have discussion about the medical office building, it was allowed to be constructed. Then the owner went to the building inspector and stated they want to relocate the kitchen. Attorney then used Bylaw 40A section 7 to justify this and its use after 6 years.

A. Rose stated then that he cannot be “sold” on that a permit for a kitchen leads to 3 units in the structure. Attorney Shutzer explained that part of the reason he and his client are before the Board today is, not because they are asking the Board to justify what they couldn’t on October 26th, but are asking the Board to review the order from the Building Inspector, specifically the enforceability of the letter.

H. Roman asked what if the letter had said “begin” in regards to the eviction process. Mr. Bettencourt asked if the petitioner had done anything besides get a purchase and sales agreement? H. Roman stated this seems to be hung up on the word evict, but what if ‘begin the eviction process was used.”

A. Rose stated that he recognizes there is a legal process to eviction.

The Board then discussed with Attorney Shutzer and his client the issue regarding who the enforcement letter was sent to. Mr. Bettencourt stated that the two permits related to this property were both signed by Ms. Cashman as the authorized person. Mr. Bettencourt stated that the permits were to remodel the kitchen in 1996 in the rear and to move the kitchen in the front to a different wall. Mr. Bettencourt stated that on none of the applications Ms. Cashman submitted and that she signed, none of them say, add an additional kitchen.

Mr. Bettencourt then referred back to the 1965 plan for the property was brought up and showed there was a lab on the first floor, and according to the locus on the plans an existing garage, nothing about quarters above. Ms. Cashman then stated that the residences have been there since 1951.

Mr. Bettencourt stated in the 1984 decision the Board approved the use that Mr. Cashman knew by increasing the use of the building and changing it going forward would be a financial burden because the structure could not be used as anything other than a medical office.

Mr. Bettencourt then explained his thoughts on the 1984 decision and explained what has been happening on the property. Mr. Bettencourt explained to the Board why Ms. Cashman was identified in the order. Attorney Shutzer explained that Millennial Limited is the listed owner. A. Rose asked Attorney Shutzer who the authorized agent it, to which Attorney Shutzer stated the enforcement order was sent to his client personally. Mr. Bettencourt then brought up other points in the 1984 decision regarding lots on Sculpin Way. Mr. Bettencourt continues to outline what had happened on the property over time. Mr. Bettencourt also stated that Ms. Cashman is the one who applied for and signed the application for determination for the Zoning Board and this is why she was noted as the owner, as well as the

owners address is listed as hers. Attorney Shutzer then stated that the owners name is listed at Millennium Realty Trust, which A. Rose states Ms. Cashman is a general partner of, Attorney Shutzer agreed and stated there are multiple partners of the trust. B. Croft asked if she is the authorized agent.

Attorney Shutzer then asked Mr. Bettencourt what he wished to occur, because as Attorney Shutzer stated this has been going on for 28 years, and that Attorney Shutzer stated he is only asking for a it to continue for a few more months. M. Kornitsky stated that the Board needs to decide if Mr. Bettencourt has exceeded his authority. Attorney Shutzer stated it is clear that it is excessive authority to require someone who doesn't own the property, that they would need to get permission from the other limited partners, and the issue over the timeframe of evicting the tenants.

A. Rose agrees an instant eviction is unrealistic. Attorney Shutzer stated that if Mr. Bettencourt would send a new order that could be complied with, then maybe his client would withdraw. Attorney Shutzer reiterated that the letter was sent to the wrong person. A. Rose asked Attorney Shutzer who the authorized agent is, Attorney Shutzer stated that it is not his burden, and reiterated the property is owned by Millennium Realty Trust. A. Rose again asked who the authorized agent is to send the letter to. R. Landen stated that he looked up the property on the Massachusetts Secretary of State website and that Ms. Cashman is stated as the registered agent. Attorney Shutzer stated that she may be the registered agent but that she is not the person who should vote. M. Kornitsky then stated if she is the registered agent with the secretary of state then she is designated as the person to accept process. A. Rose then asked Attorney Shutzer to give Mr. Bettencourt the name of the owner, and then stated that notice should be given to the tenants and then have them go through the process of eviction. A. Rose then explained his thoughts on different possibilities of what could happen.

. Kornitsky asked, if the Board upholds the Building Inspectors decision and the Building Inspector looked to continue with the enforcement order, would the Building Inspector go to Superior court? M. Kornitsky also asked about the applicants rights in a situation such as the one previously mentioned. M. Kornitsky explained that it seemed the next steps arefor this situation to be in front of a court, looking for an injunction.

M. Kornitsky mentioned that he did not think it would come before the ZBA over an issue of exceeding forcibility, and that if Mr. Bettencourt has the wrong owner, than that is for a court to decide. Attorney Shutzer explained that from the beginning he and his client have requested a continuance, because he knew the volume of information would be a lot to be discussed by the Board. Attorney Shutzer then asked if he and his client could receive a continuance and have time to have new offer in and legitimize the units on the location, which Attorney Shutzer believed that was an appropriate vehicle because the Zoning Bylaw itself recommends the reuse the repurposing of existing structures.

Attorney Shutzer also stated that in today's zoning, there can only be one principle residence on a lot, and if there are multiple properties on a single lot that predated zoning there would be a preexisting nonconforming use. Attorney Shutzer stated he did not want to get into the proof, due to the large amount of details.

M. Kornitsky mentioned that he believes the remedy to this situation is in Superior Court and discussed his thoughts. Attorney Shutzer and M. Kornitsky then discussed potential remedies to the situation. Attorney Shutzer outlined the events that have happened since the last hearing in October in regards to the intent of the previous petition brought before the Board by Ms. Cashman and explained why they are before the Board at this hearing. Attorney Shutzer stated that he did not want to create a record that might have some effect on the title of the property. Attorney Shutzer then explained that he did not think that there would be as much opposition regarding the previous petition heard in October. M. Kornitsky explained to Attorney Shutzer that he believes these issues should be dealt with through the municipality over the enforcement order. Attorney Shutzer stated that he could not "comport" the enforcement order,

because Attorney Shutzer stated that he could not do the things that were asked, such as using self-help to evict people in a three week period.

M. Kornitsky then reiterated that he believes the arguments being made by Attorney Shutzer would fall under the jurisdiction of Superior Court or Land Court.

D. Doherty then stated that this hearing has been going on for a very long time and nothing new is being uncovered.

D. Doherty motions to close the public hearing, M. Kornitsky seconds it, the Board is unanimously in favor, the public hearing was closed.

MOTION : by D. Doherty to deny the application of Patricia Cashman appealing the findings in order of the Inspector of Buildings to immediately evict any persons living in the rear structure and anyone living in the front building to vacate the premises by December 31st, 2016 and any resultant fines or violations thereof, Seconded by B. Croft, unanimously denied.

PETITION 16-39

224 SALEM STREET

Application of POYANT SIGNS, INC. seeking a special permit (signs) for the new accessory signage for the Residences at Vinnin Square. Seeking approval for two (2) signs at entrance to the property, and one (1) directional sign at the Sunbeam Road entrance. All to be illuminated on the exterior

M. Kornitsky mentioned to the representatives present that property looks good and asked for the representatives present to introduce themselves.

Mike Patenaude from Poyant Sign, Inc was present with Ted Doyle from LCB Senior Living.

M. Kornitsky asked the representatives to explain their requests.

Mr. Patenaude explained that they have submitted an application for a sign permit, and that on the original plan, previously approved for the project, the signage was different than this request. Mr. Patenaude stated his company was not part of the original sign designs.

Mr. Patenaude then explained to the Board using a map of the property , what type and where the signs will be located. Mr. Patenaude stated there is a rock wall in the current location of the proposed sign, and that the proposal calls for granite posts with a non-illuminated sign panel. Using the map, Mr. Patenaude showed that there will be rocks to the right, left and underneath of the sign, which Mr. Patenaude explained is different than the original plan, which had the sign mounted to the rocks, but that the rocks placed there did not allow the proposal to work. M. Kornitsky then asked Mr. Patenaude to orient him to the locations of the signs. Mr. Patenaude, using the maps of the proposed work, which was handed to the Board, explained the different types of signs and the locations they would be placed. M. Kornitsky asked about the proposed sign being placed on Sunbeam Lane. Mr. Patenaude stated it will be a directional sign. Mr. Patenaude then stated that from what he understood the Building Inspectors office questioned the proposed sign work because it is different from the original approved plans.

B. Croft asks if the sign will be seven or ten feet tall? Mr. Patenaude stated the sign will be 7' 10" out of the ground, but a footing in the ground as well. M. Kornitsky asked the square footage on the signs proposed, to which Mr. Patenaude

replied they are 25 sf. M. Kornitsky asked if each one is 25 sf, to which Mr. Patenaude replied that is correct for the signs on the wall. M. Kornitsky then asked the square-footage measurements for the directional signs. Mr. Patenaude replied the signs will be he believes 20 sf. M. Kornitsky asked Mr. Patenaude if he knew how much the sign exceeded the bylaw by in the previous plans. Mr. Patenaude explained he did not believe that the signs size exceeded the area, but that the number of signs did. Mr. Patenaude mentioned that when he had previously looked at the plans he believed it was 45 sf, and that he had not received any paperwork explaining why the signs were denied. Mr. Patenaude explained that he had heard through a third party that on the Salem Street side where the two signs are placed, that generally are only allowed one sign, and its double faced. Mr. Patenaude explained because of the design elements and the wall signage, the proposal called for two signs to be placed there. Mr. Doyle then stated that there was a setback issue. Mr. Patenaude explained that because of the setback, you cannot put a double sided sign in that location and have it perpendicular to the road.

Mr. Doyle then explained to Board the reasoning of why there are two signs being put in that location. Mr. Doyle mentioned that there is a marketing application of having the signs visible from two angles, as well as a safety issue. Mr. Doyle explained that they wish the signs to be visible for emergency vehicles traveling to the property and for senior citizens as well, and that having the sign only visible from one direction would mean visitors would slow down or miss the driveway entirely. B. Croft mentioned that the building is quite visible. Mr. Patenaude explained that in an emergency it will be helpful to have an appropriate sign and for seniors as well.

T. Paprocki asked what the property is zoned as, M. Kornitsky reviewed past documents related to the property and explained that on the 2015 amended application, the property was listed as an A2 District. A. Rose then asked if A2 districts allowed for signs, to which M. Kornitsky explained if the zoning is correct then there is an issue with the relief that is requested. Mr. Patenaude then stated that he believed the original plan with signs was already approved. A. Rose then asked if there were pictures of what was approved. Mr. Patenaude stated that he believed there were pictures in the packet before the Board. Mr. Patenaude then explained the changes of the new proposed signs and the originally approved signs. Mr. Patenaude stated that the new proposed sign, he believes will be smaller, which A. Rose stated that the signs look to be the same. A. Rose stated that the proposal calls for a single sign on one side, as opposed to both sides. Mr. Doyle stated that there was a visibility issue, to which Mr. Patenaude using the proposed maps showed the Board the issues around the previous signage design.

A. Rose stated to M. Kornitsky that the signs will be the same size, except there will be two now. A. Rose continued to explain the issue is the project was able to receive an approval for a sign some way, as there is no sign Bylaw for A2. Mr. Patenaude explained the sign will be illuminated externally rather than internally.

Mr. Patenaude then explained the sign, that is proposed to be paneled, will be a little smaller than the original, and instead of putting the properties address number next to the panel, mounted to the rocks, the numbers will be on the sign. M. Kornitsky asked if Mr. Patenaude had the original application from 2015 with the signage. H. Roman and A. Rose explain to M. Kornitsky, the information is in the packet.

A. Rose asked about the Sunbeam Lane directional signs, and what the differences will be, Mr. Patenaude stated there would be none. A. Rose stated that the sign will be on granite as well but the only change is the sign is now raised up? Mr. Patenaude agrees. The Board discusses the new plans and the differences. M. Kornitsky asked about the Sunbeam Lane directional sign, and asked if that sign is there because Sunbeam Lane is a one-way? Mr. Doyle stated they wish to make this very clear with the directional sign. M. Kornitsky asked if Mr. Doyle and Mr. Patenaude thought that that the "arrow" was preferable to have paired with "exit only". Mr. Doyle also mentioned that they could amend the signs if need be. B. Croft asked that if you were to be driving down Sunbeam Lane, vehicles would see an arrow pointing toward the right, towards the property? M. Kornitsky and B. Croft discussed the location of the sign. Mr. Doyle clarified that the

sign will be on both sides. M. Kornitsky and B. Croft continue to discuss the sign on the Sunbeam Lane side of the property. M. Kornitsky stated that he does not have a problem with the sign changes on Sunbeam Lane. A. Rose also stated that he has no problem with the other sign as well and explains he understands why the sign is needed. Mr. Doyle stated that where the location allows, they would do two sided signs, but because of the set back the two signs work.

A. Rose recuses himself from the vote, and H. Roman fills in as the alternate.

MOTION : By T. Paprocki to approve application 16-39 from Poyant Signs for modifications to signs previously approved for LCB Living Center, as per plans filed, seconded by D. Doherty, unanimously approved.

ADMISTRATIVE REVIEW

57 ROCKLAND STREET

M. Kornitsky calls forward the representatives for 57 Rockland Street.

M. Kornitsky explains representatives are back in front of the Board for an administrative review request made for changes being made to the originally approved plans for petition 16-30.

Craig Bosworth states that he is the architect for the project and that he is representing Mr. Wattendorf (who was not present) at the review.

Mr. Bosworth begins by explaining that on the main floor, there is a proposed bay form area in the master bedroom suite, and that the new intention is that instead of a bay form, to go straight with the wall. Mr. Bosworth states that by doing so this will increase the square-footage by 20 sf. Mr. Bosworth then showed the Board the elevation drawings of the location and explained the changes that will be happening. Mr. Bosworth explained that there is currently a proposed bay and the roof was going to overlap on top of that, but that the new changes now have the roof form continue straight out to one continuous eve. Mr. Bosworth uses the map of the proposed side elevation of the property to show that originally you would have been able to see a corner of the bay, but that it is now absorbed by the remainder of the corner of that projection.

M. Kornitsky asked if anyone present is in opposition and wishes to be heard, there was none.

M. Kornitsky constitutes the Board as B. Croft, M. Kornitsky, H. Roman, D. Doherty, and R. Landen.

MOTION : by M. Kornitsky to make a finding that the proposed change to the floor plan is in substantial compliance with the previously approved plans, D. Doherty seconded, unanimously approved.

PETITION 16-38

36 EDGEHILL ROAD

This is application by UBW Inc, to construct a single-family dwelling in an A2 district on an irregularly shaped lot containing less than the minimum lot size with less than required frontage.

Attorney Samuel Vitali states to the Board that he is representing the petitioner UBW Inc. Gary Finari, an employee for UBW, Inc. is also present.

Attorney Vitali begins by explaining the lot is identified as number 36, and that the history of the lot is significant to the relief requested and if the application needed to be in front of the Board. Attorney Vitali explained that the lot has 5,000 plus square-feet and over 50 ft of frontage. Attorney Vitali mentioned that the property was owned by the Almy family from the 1860s to about the 1920s, and that the heirs and descendants of the Almy family then deeded out lots. Attorney Vitali explained that earlier at the hearing he had heard reference to the Bylaw in 1924 and that UBW Inc. is owner under agreement to buy the lot. Attorney Vitali went on to explain the Town Accessors office characterizes the lot as a “developer lot”. Attorney Vitali then stated that he had spoken with Building Inspector, Mr. Bettencourt and Peter Kane (Director of Community Development) that Bylaw does have a provision for grandfathered lots, provided that they conform to the requirements for Massachusetts General Law 40A section 6 paragraph 4, which discusses lots with 5,000 ft and 50 ft of frontage provided that the lot was not held in common ownership.

Attorney Vitali stated that the issue is whether the lot was held under common ownership. Attorney Vitali explained that the respected surveyor, Guay, drew a property plan in 1914, but that this plan was not recorded at the registry of deeds until 1924, which Attorney Vitali mentioned was the year that he believes the Town Bylaw went into effect. Attorney Vitali handed forth a map to the Board. Attorney Vitali then explained that the map recorded in 1924 was of many lots, and that Guay was a renowned surveyor, and that he combined certain lots. Attorney Vitali then showed the Board that the lot in question is known as lot 42, and explains that if you look at the Accessors map, it is called 12-42. Attorney Vitali states that there was a title search done, and that the critical deed found, is a deed from a heir or descendant of the Almy family to woman named Hilda Hardy. Attorney Vitali then explained that the title examiner ran the title all the way down from Ms. Hardy and the only other owner is the Town Of Swampscott, who have a lean on the property for unpaid taxes. Attorney Vitali then handed the deed to the Board to review. Attorney Vitali explained that in recent history the lot came to the Didio family and that the Didio family, and that a woman named Joan Didio became one of the recent owners of the property. Attorney Vitali then explained that Ms. Didio was married to an individual named Anthony Corso, but that they divorced, and Mr. Corso was ordered to deed the lot to Ms. Didio by probate court. Attorney Vitali continued to explain that Ms. Didio passed away and that her son George is the representative of the state as filed. Attorney Vitali then explained that if you run the deed to Ms. Didio from what was originally called Progress Park. Attorney Vitali continues that if you run the deed continuously there is no other lot from Progress Park that has ever been owned by anybody that is in the chain of title Attorney Vitali had handed the Board.

Attorney Vitali mentioned that he also noted in the deed that also gives credence to the fact that it was a separately held lot is that right in the deed, the deed says “also it is a provision of this conveyance that the grantee shall maintain all division’s fences at no expense to the grantors, so long as the grantors own the adjoining land”. Attorney Vitali explained that this means the grantors own the adjoining land, which in this case is Hilda Hardy.

Attorney Vitali stated that the other lots in Progress Park were researched, along with their deeds because as Attorney Vitali stated they were all descendants of the Almy family. Attorney Vitali stated when you research lot 42 there was never been a conveyance of any of the other lots in Progress Park to the people listed in the chain of title for lot 42.

Attorney Vitali explained that ultimately all the lots were deeded out by the Almy family, and that some lots were in common ownership, but not the one in question. Attorney Vitali mentioned that he believes, given what was found in the research of the title, that they would request a variance, like the lot across from theirs, because the lots on Edgehill Road are very close in size. M. Kornitsky states that he does not believe that the Board would grant a variance but instead would make a finding. Attorney Vitali stated to the Board that UBW wants to build a single-family house that is consistent with the character of the area. Attorney Vitali explained that since the Bylaw has a provision for grandfathered lots and that the question is if the lot conforms to the original conveyance of the Bylaw. Attorney Vitali stated to the Board that the only requirement in the 1924 Bylaw that pertains to a single-family residence that it must

have 20 feet of frontage, but that there is no lot size requirement. Attorney Vitali reiterated that the home needed a 20 foot setback, and then stated that the lot has a 20 foot setback and that it conforms to the then requirement. Attorney Vitali stated that this has probably been satisfied since the original conveyance and recording of the deed.

Attorney Vitali then explains to the Board the different State Bylaws and zoning practices, and explains the opportunities and possibilities his clients have with the lot. Attorney Vitali mentioned that they could keep the lot empty or build on it.

Attorney Vitali explained that in conversations with Mr. Kane, Mr. Kane cited sections of Town Bylaw, suggested the petitioners need to demonstrate that the lot is consistent with Bylaw section 2.3.5.0, which speaks to unimproved lots. Attorney Vitali also mentioned that Mr. Kane had explained that they should provide documentation to the Board demonstrating it from the time it was created.

Attorney Vitali then reiterates the steps and information found with their research on the lot.

Attorney Vitali explained that he had spoken with the Town Treasurer, because in their research they found a Notice of taking by the Town. Attorney Vitali mentioned that at that there is an approximate \$2,000 bill and that if UBW Inc. pays the bill, they can get a release, but that UBW Inc. has not gone to land court yet, so they do not own the property.

Attorney Vitali mentioned that they have tracked the lots and the titles and believes the lot is free standing lot that satisfies M.G.L. 40A section 6, paragraph 4 and that it satisfies the section of the Bylaw that was previously read to the Board. Attorney Vitali mentioned that his client has provided the Building and Planning Departments with the title exam and is unsure if they need to file an application because if that is in fact true, the statute states that if you present yourself, you can receive a building permit. Attorney Vitali mentioned that UBW has an agreement that they are acquiring the lot with a provision that it is a buildable lot.

Attorney Vitali explains the events that had happened since the last meeting and the situation he believes the petition is now in.

M. Kornitsky stated that he appreciated the analysis and summary, but did expect Attorney Tobin (Deed specialist hired by UBW to check deeds, attended previous hearing) to have a written opinion stating proof the lot is not in common ownership. Attorney Vitali states that the last line on the bill provided is Mr. Tobin's summary. Attorney Vitali states Mr. Tobin's conclusion is because he told Mr. Tobin about the tax lien on the property. M. Kornitsky mentions that the Town never owned the property, they had only inserted a lien, Attorney Vitali agrees. M. Kornitsky then read Mr. Tobin's summary, and Attorney Vitali clarified certain parts. M. Kornitsky states that he is still uncertain about some of the lots, Attorney Vitali and M. Kornitsky then both reviewed the map and list provided to the Board.

Attorney Vitali and M. Kornitsky discuss the deeds that were deeded out from what was known as Progress Park.

M. Kornitsky asks if Attorney Vitali can go to the Building Inspector and show this evidence. Attorney Vitali stated that he has talked with the Building Inspector and that he would have a look at it. Attorney Vitali mentioned that he does not think this is a case for the ZBA but the Building Inspector's decision. A. Rose stated that he believes Mr. Bettencourt is not looking for a decision but a finding. Attorney Vitali then explained the steps they have taken in researching this lot.

M. Kornitsky stated that he could give a finding that, so long as location 12-42 remained in separate ownership from 1924 forward from any abutting property, that it appears to be a buildable lot, Attorney Vitali agrees.

M. Kornitsky mentions that he agrees with the analysis on 40A section 6 and the requirements listed out in that section.

M. Kornitsky then asked for D. Doherty's thoughts on the petition. D. Doherty and M. Kornitsky then both read P. Kane's original comments on the application. M. Kornitsky and the Board discussed possible language for a finding. M.

Kornnitsky stated that the relief from the ZBA requested is now much less than what was originally requested, and mentions a possible direction that the petitioner could go.

M. Kornitsky then explained that there is another way of going about this, and that is for the applicant to continue until February, and have them see the Building Inspector in the interim and if they cannot get a building permit, to come back before the Board for a finding. Attorney Vitali agreed to that.

Attorney Vitali M. Kornitsky discuss what should be provide to Mr. Bettencourt, and the next steps the petitioner can take. M. Korntisky stated that if the building permit is denied with a determination then the petitioner can amend their petition to be an appeal of the determination.

MOTION : by M. Kornitsky to continue, approved.

M. Kornitsky motioned to adjourn, approved, meeting closed at 9:44pm.

Andrew Levin
Assistant Town Planner