



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
DONALD HAUSE
ANTHONY PAPROCKI
HARRY PASS, ESQ.

ASSOCIATE MEMBERS

DOUGLAS DUBIN
ANDREW ROSE

JANUARY 20, 2016 MEETING MINUTES

Time: 7:05-9:45PM
Location: Swampscott Senior Center, 200 Essex Street (rear)
Members Present: M. Kornitsky, D. Doherty, A. Rose, A. Paparocki, H. Pass,
Members Absent: D. Dubin, D. Hause
Others Present: Pete Kane (Planning), Jeff Blonder (resident), Mercedes Balcells-Camps (applicant), Dana DiLisio (applicant), David DiLisio (applicant), Paul Lynch (attorney), Brian LeClair (attorney), Alec Cheloff (applicant), David Barker (applicant), Bob McCain (attorney), Charles Patsios (property owner), Damon Seligson (attorney), Terry Gadman (resident), Joanne Reynolds (resident), Steve Gadman (resident), Taylor Desmond (business owner), Frank Orne (applicant), Bette Johnson (resident), Alice McGuire (resident), Chris Soucy (resident) .

Meeting called to order at 7:05pm by Chairman Kornitsky.

MEETING MINUTES

The Board reviewed the minutes from the hearings in October, November, and December 2015. By motion of A. Rose, seconded by A. Paprocki, the minutes were unanimously approved.

UPCOMING MEETINGS

The Board then set their next two meeting dates: Wednesday, February 24 and Tuesday, March 22.

ZONING RELIEF PETITIONS

PETITION 15-34 (57 MONUMENT AVENUE): Application of JON GARBOWSKI seeking a dimensional special permit, special permit (non-conforming use/structure), and a site plan special permit to add a 2-car garage with studio space above including a mudroom addition between the proposed garage and existing 2.5-story house. Map 4, Lots 43 & 44.

Applicant's representative had submitted a request for continuation until the February hearing in order to finish review with the Historic District Commission.

Motion: by A. Rose to accept continuance request. Seconded by D. Doherty, unanimously approved. Petition will be taken up at the Feb 24 hearing.

PETITION 15-38 (234 WINDSOR AVENUE): Application of MERCEDES BALCELLS-CAMPS seeking a dimensional special permit to add an attic, extend a back porch, and create a one-car garage in basement. Map 11, Lot 337.

Mercedes started by handing out plans to compare existing conditions and proposed. She owns and has resided at the home for 11 years with her family. They've outgrown the house. It's a small lot which doesn't comply with the zoning regulations. The house has a flat roof that requires them to manually remove the snow each year and received significant damage last year. So they want to slope the roof and add living space by creating a second story. Also want to incorporate a one-car garage into the existing basement (due to the slope of the property).

M. Kornitsky pointed out there's a procedural issue in that it appears she needs a special permit under 2.2.7.0 as well as under 5.4.0.0. He said it could create an issue should the decision be granted on the single special permit she applied for (dimensional special permit). There was no one present in opposition to her application.

He clarified that she's requesting additions for the second floor, sloped roof, back porch, and one-car garage in basement.

She feels her project is an improvement because of the primary issue - the flat roof. By tilting it, they can increase the living area that can also allow for work-from-home. The bylaws have changed about on-street parking during the winter so there may not be as much of a need for the garage. The lot is small and doesn't have much outdoor space so they'd like the back porch for usable outdoor space. There was a previous addition from the previous owner where the basement was increased and brought closer to the rear lot line.

A. Rose didn't feel there were any issues with the project but feels that it's important that she go through site plan review like all other applicants have to do. He suggested that she go to the Planning Board prior to the next ZBA hearing. He also feels there should be site engineer in order to mitigate stormwater issues with the below-grade garage.

Motion: by D. Doherty to accept request for continuation, seconded by A. Paprocki, and unanimously approved. Petition will be taken up at the Feb 24 meeting.

PETITION 15-39 (443 ESSEX STREET): Application of DAVID & DANA DILISIO seeking an extension to the existing special permit for 42 units in three buildings. Map 13, Lot 7.

Attorney LeClair stated that this is a request for an extension. The project withered through the real estate disaster that started in 2008. The property was under agreement for most of 2015. The developer that wanted to do the project requested extensions on their agreements for site clearing. They applied for and received the Earth Removal Permit. They are seeking the extension for two years so they won't have to start in the winter. They have a site contractor lined up to start site work.

Jeff Blonder (abutter) spoke in opposition to the proposal. He reminded the Board that the ZBA had denied the project. It went to Land Court and was granted. He pointed out that the reality of the community has changed - there is now the large Hanover project on Paradise Road that may impact traffic on Essex St. They're asking for three apartment buildings on a site of under two acres. He pointed out that there should be more smart growth like other

areas in the town. He feels another traffic study should be performed. They had a lot of opportunity and years to follow through with the project.

Mr. LeClair pointed out these are condos, not apartments. They comply with the current zoning and fully legal. The Town wasn't ordered to permit the project, after discovery, the Town agreed to the order. The court had rejected the arguments that were raised by Mr. Blonder. The Legislature granted special permit extensions due to the real estate collapse.

Mr. Blonder said that the Court added a number of conditions to the permit. He asked if they met any of the conditions. M. Kornitsky stated that the request is for a time extension, but the conditions were related to the construction project. If the Board votes to extend the time, it triggers an appeal period.

H. Pass said that he remembers the Board denied the original project but they aren't here to discuss the merits of the project - just the time extension. M. Kornitsky said that he'll decide the case based on the issue at hand.

Motion: H. Pass to close public hearing, seconded by D. Doherty, unanimously approved.

M. Kornitsky said he's inclined to allow an extension for one year but is willing to discuss it. They could have the option to come back in six months for another extension. H. Pass and A. Rose said they would recommend going with two years because real estate transactions can take time. H. Pass said the Town Planner recommended that site work be done in first year. A. Rose recommended instead that some off-site work could be conditioned to be done. The applicant has to post a \$25,000 amount to cover the cost of infrastructure improvements per the special permit.

Board discussed where there should be a condition for application of a building permit within a year or emphasizing the \$25,000 requirement.

Motion: M. Kornitsky moved to approve the request to extend the special permit from the current expiration date (March 26, 2016) - to expire March 26, 2018 with no further extensions to be granted by this Board. Seconded by D. Doherty. Unanimously approved.

PETITION 15-40 (121 ELMWOOD ROAD): Application of ALEC CHELOFF seeking a dimensional special permit to install a shed at rear of house within the rear yard setback. Map 2, Lot 5.

Alec Cheloff began by offering another option that wouldn't require zoning relief but would require approval by the Historic District Commission. They would turn the shed by 90 degrees and it would be offset from the back property line and building by 10 feet as required.

D. Doherty raised that he believes it may still require a special permit. The Board reviewed the language of the bylaw and determined that the revised plan may not require a dimensional special permit. Mr. Cheloff requested a continuation to the next hearing to get approval from the Historic District Commission first.

Motion: by D. Doherty to accept request for continuation, and unanimously approved. Petition will be taken up at the Feb 24 meeting.

PETITION 15-41 (102 BELLEVUE ROAD): Application of DAVID & CHERYL BARKER seeking a dimensional special permit to construct an open stair entry and covered eave/roof partially within front yard setback. Map 31, Lot 2.

Attorney McCain explained the existing conditions of the property. The proposal is to add a new front door and covered porch along with pergola. He then walked through the compared existing and proposed plans and elevations. Sheets A-5 and A-5A: The changes are the windows, decorative pergola, no change to upper levels. Sheets A-6 and A-6A: new entrance door. Sheet A-7: no proposed changes. Sheets A-8 and A-8A: changes are the right side with the entry.

They are seeking a special permit under 2.3.6.0 due to the encroachment of the new steps into the front yard setback.

In the comments from DPW, there was a comment about water pipes that are coming in. It should be easy to get under the stairs since they are only 4 feet wide. There was a question about the half-circle drive. It will be shaved at the top where the stairs will be and might be widened on the inner side of the half-circle due to the stair encroachment. There was also a question about whether there was a need for a special permit under 2.2.7.0. Mr. McCain had gone through 2.2.7.3 point b, and says that it's a non-conforming lot and a conforming structure. It allows for only a dimensional special permit.

The project helps improve the front of the house and fits the criteria of a special permit.

No public comment.

H. Pass thought it was odd that this minor project requires a special permit. But it is a breach into the front yard setback.

Motion: by H. Pass to approve the petition for a dimensional special permit for an open stair entry and covered eave within the front yard setback with condition that its built in conformance to the plans. Seconded by M. Kornisky, unanimously approved. Attorney McCain will draft decision, to be finalized by H. Pass.

PETITION 15-42 (12-24 PINE STREET): Application of FRANK ORNE seeking a use special permit to allow for storage of vehicles and light vehicle servicing. Map 3, Lot 4.

Attorney Paul Lynch explained that the property has been transferred to Charles Patsios. They are seeking a use special permit for light vehicle servicing and he read the definition of the use from the zoning bylaw. He presented a floor plan to demonstrate the area of the structure for that use. Within the proposal, there's no change to the appearance of the building other than cosmetic. All work will be performed inside the building. There will be no fuel stored or dispensed. The intended use is for antique hobby shop. It has a long history as a dealership, then storage/servicing of oil delivery trucks, and then storage of other vehicles.

Upon inspection, the Building Inspector confirmed that the storage of vehicles on parking area and within building was an allowed use. He distributed a letter from the Inspector to the owner confirming this. This was continuing the allowed use.

The traffic flow and parking will not increase. There will be no new utilities brought into the site. The building presence will remain the same within the neighborhood.

Attorney Damon Seligson (on behalf of a number of residents in the neighborhood) spoke and presented a petition by residents who are opposed to the proposed use. He stated that in December, the Building Inspector issued a cease-and-desist order due to the light vehicle servicing that was occurring in the property (copy of order submitted to Board). There is storage of classic vehicles that are being repaired at all hours of day. After the cease-and-desist order, the light vehicle servicing continued. One neighbor documented the dates that the light servicing occurred after the cease-and-desist. Attorney Seligson says that a special permit is needed for both light vehicle servicing and vehicle storage. He asked if the proposed use brings benefits that outweigh the negative impacts to the neighbors such as noise, pollution, vibrations, loud engines. He presented photos of welding equipment they're using - what's the ventilation that's offered in the building? He pointed out that a member of the ZBA is one of the individuals performing the light vehicle servicing at the property. He also doesn't believe that they will comply with any conditions set.

Terry Gadman (11 Pine St) says she feels unsafe in her home. There are loud noises. They see them bringing in lots of equipment and material. She's afraid of an explosion.

Joanne Reynolds (19 Pine St) lives right across from the property. She said it started in October. The users in the building said that they "had it in the bag" and would be allowed to do it. She said that they needed a permit. She said the previous owner never sought permits. There had been an exterminator and power washing in the space in the past. She's afraid that it will "go up." There was a delivery tonight of more vehicle parts. They were fixing windshield wipers on the street. They also had been repairing a sports car. They want some peace and the property to be cleaned.

Steve Gadman (11 Pine St) feels the main issue is that Mr. Dubin serves on the ZBA and yet is taking part in the activities in the building. He called into question what they'll do if applicant gets the permit. He then raised an issue with the fact that the application was by Frank Orne but there's a new owner, Charles Patsios.

Taylor Desmond said that he's one of the people renting the space. He said that since the notice on the door, there was no servicing happening in the building. They took the respect to bring this request to the Board. They've done what they can by talking with the neighbors. M. Kornitsky asked how much space he was renting - about a quarter. He said there are three people renting space.

Frank Orne (previous owner) said he and Mr. Patsios were going to close the sale much earlier. It took a while due to previous notes at Registry of Deeds. Mr. Dubin's sign went up because of the heating and installation that was being installed today. Ducting was delivered today (not fenders) for the heating and AC system on the roof. He confirmed there hasn't been any light vehicle servicing since the cease-and-desist.

Bette Johnson (14 Eire St) abuts the building. She's been home since Nov 12 and didn't experience any noise. Said they've been wonderful neighbors. She hasn't seen any lights on at night. She'd rather have someone in the building than vacant like it used to be.

Alice McGuire (33 Pine St) has lived there 52 years. She said there's always noise there. There's been nothing done to that building for years. It was flooded and he received insurance money. No improvements were made. Said Frank Orne hasn't been a good neighbor. They were racing cars up the street. They've also had motorcycles there too.

Chris Soucy (22 Pine St) said he's only been there 10 years. He's glad they're trying to build up the business but that it's not the right type of business. It's a late evening usage that's not appropriate in the neighborhood. If it's going to be auto repair, it needs to be during normal business hours.

Frank Orne responded that they had put in a new line of windows into the building.

Charles Patsios (new owner) said he recently purchased the building. The building has been automotive-based evident by the four large overhead doors. It's constructed with steel, brick, and concrete. There aren't engines in the cars (four don't, the fifth he's not sure about). They are repairing the building, continuing to do other improvements at 460 Humphrey St. There are lifts in the building. There's a security system being installed. He suggested that the Board define hours of operation. The closing was on Jan 15, 2016. He occupied the building prior to closing. There's been no repair work happening.

M. Kornitsky asked Mr. Lynch when the last time the lifts were used - it would have been when Common Door was there with their trucks. It's historically been under the watchful eye of the neighbors because of the proximity of the B-1 property with the abutting residential properties. Double D has been hired to perform building enhancements by Mr. Patsios.

Mr. Seligson responded that the term light automotive repair is vague. If the cars are just frames without their engines, does that make it light automotive repair? The use requires a special permit; it's not by right so they need to show the benefit of the use. "We think it's the wrong use for this site."

Bette Johnson said that they had to go to a hearing in the past due to the number of times FedEx made deliveries there. Neighbors have been very pressing on the property. Resident at 12 Eire St agreed with Bette.

Steve Gadman said that they're happy to see the building fixed up. If the actions had been done correctly from the beginning, "we wouldn't need to be here or upset."

D. Doherty asked Taylor Desmond about the nature of the work that will happen. What're their intentions in the space? Will there be engines taken out of or put into cars in there? Mr. Patsios said he'll restrict the lease to whatever conditions are in the special permit. He said they would remove and replace engines but the engines would be worked on at another site. They will be stripping the antique cars down so that parts can be repaired/refinished. Because it's a hobby and not a business, it means that it'll happen after hours.

M. Kornitsky pointed out that if the storage of the vehicles is an allowed use, what's a permitted accessory use?

H. Pass said that petitions like these are opportunities to get properties improved. He suggested there be conditions set to improve the outside appearance and eliminate the racing cars with the garage doors shut. Maybe also condition that there be no engine work where there's noise. He also raised that Charles Patsios is now the owner but wasn't on the application.

D. Doherty said this is the only case that he can remember where the use that's explained exceeds the use that's applied for. They say they're going to do light automotive repair but they're going to do general automotive repair due to the engine removal/replacement. Since this is just a hobby, there's no reality or desire by tenants to improve the exterior of the building.

A. Rose said that if they can't have the engines, they'll have to be towed in/out of the garage. Engine in and out is major repair. This is a B-1 district and there's no social benefit from this - it's a hobby. He's troubled by the off-hours.

M. Kornitsky said that in terms of the use as a hobby - he agrees that the conflicting hours would be difficult to work with. If the hobby operated within limited business hours, it would be less detrimental than if it were a business.

Though there's still issue with the fact a hobby would operate over the weekend. He believes Mr. Patsios could come up with good property improvement plans (aesthetics, sounds). He suggested the applicants meet with neighbors.

Mr. Lynch said he thinks the way the discussion is going that it won't be beneficial if approved. He'd like to continue to March 22 so they can meet with neighbors.

Motion: by A. Rose to accept request for continuation, seconded by A. Paprocki, and unanimously approved. Petition will be taken up at the March 22.

Mr. Seligson asked what the status quo is - the cease-and-desist remains in effect.

PETITION 15-35 (168 A&B HUMPHREY STREET): Application of 168 A&B HUMPHREY STREET REALTY TRUST seeking a special permit related to the signage of Kells Kreme and Popo's Hot Dogs. Map 2, Lot 178A.

H. Pass recused himself to present his application. He said the current sign is 18" x 24". He wants to make it 24" x 30" (what's allowed for maximum size). M. Kornitsky pointed out that because there are two commercial uses and if they are 30 feet apart, there could be two signs of the maximum size. H. Pass is afraid the size is too small and can't be seen. If he does two signs, they could be applied at both ends of the building.

A. Rose said that with the large 24" x 30", he should just do a large cone icon and the name across the cone.

Motion: A. Paprocki moved to approve the petition for a blade sign of 24" x 30", signage consistent with the signage bylaw, with script or text. Second by D. Doherty, and unanimously approved.

Motion: to close the meeting at 9:45p and unanimously approved.

S. Peter Kane
Director of Community Development