



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
ANDREW ROSE

ASSOCIATE MEMBERS

DOUGLAS DUBIN
HARRY PASS, ESQ.

APRIL 27, 2016 MEETING MINUTES

Time: 7:00-9:40PM
Location: Swampscott Senior Center, 200 Essex Street (rear)
Members Present: M. Kornitsky, D. Doherty, A. Rose, A. Paprocki, D. Dubin, H. Pass
Members Absent: None
Others Present: Pete Kane (Planning), Paul Lynch (attorney), Charles Patsios (applicant), Ken Shutzer (attorney), Teresa Sirignano (applicant), Jorge Briones (architect), Anthony Pierro (applicant), David Halliotis (architect), Marilyn Cassidy (resident), Patty Correia (resident), Damon Seligson (attorney), Steve Gadman (resident), Joanne Reynolds (resident), Franziska Salcedo (resident), Joseph Masano (resident), Sherry Dagmin (resident), Richard Salcedo (resident), Alice McGuire (resident), Betty Johnson (resident), Marty Bloom (applicant), Kristan & Peter Horemiotis (applicants)

Meeting called to order at 7:04pm by Chairman Kornitsky.

MEETING MINUTES

The Board reviewed the minutes from the hearing on March 22, 2016. By motion of D. Doherty, seconded by M. Kornitsky, the minutes were unanimously approved.

ZONING RELIEF PETITIONS

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.

Hearing continued to later in the meeting until a fifth Board member was present.

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.

The applicant was not present; hearing continued to later in the meeting

PETITION 16-06 (55 BERKSHIRE STREET): Application of TARIQ MILTON seeking a dimensional special permit and special permit (nonconforming use/structure) for addition for kitchen on first floor, new bedroom and three-season porch on second floor, and new half story for master bedroom loft along with new deck at rear corner of home. Map 5, Lot 65.

David Halliotis (architect) presented updated plans for the proposed work. They have reduced the deck, shown the building footprints of abutting properties, and included footage breakdown per floor. The deck now has a side setback of 5.1 feet.

The Board reviewed the square footage for each floor. They discussed the gross square footage for the third floor to confirm that it is a half story. Much of the floor is under 7'3" and doesn't count towards gross floor area.

MOTION : by A. Paprocki to approve the special permits for the new addition to the house as presented tonight with the condition that the third floor be no more than 50% of the floor below.

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.

The Board reopened the petition hearing – applicant was still not present. M. Kornitsky suggested that the petition be withdrawn without prejudice.

Marilyn Cassidy (7 Young Ave) was present to speak on the application. She stated that she's opposed to the project.

Attorney Shutzer suggested that the petition be continued to the next hearing. Board agreed. A. Rose noted that the applicant needs to sign the continuation request. Attorney Shutzer noted that there were previously agreed-to continuations by the applicant.

MOTION : by M. Kornitsky to continue the petition to the May 18, seconded by D. Doherty, unanimously approved

PETITION 16-10 (326-330 PARADISE ROAD) : Application of CROWN POINTE CONDOMINIUM TRUST seeking at appeal of the determination of the Inspector of Buildings related to the issuance of the final Certificate of Use and Occupancy as it pertains to the installation of a "greenbelt" at Hanover Vinnin Square. Map 34, Lot 111.

Attorney Shutzer (for applicant) stated that the he had received word from the Hanover Vinnin Square attorney (Michael Callahan) hadn't received notice of the hearing. Notice was mailed to property owner (out of Texas). Mr. Callahan requested a continuation until the next hearing. Attorney Shutzer requested that the petition be early on the May agenda.

MOTION : to continue to May 18 by D. Dubin, seconded by M. Kornitsky, unanimously approved.

PETITION 16-08 (672 HUMPHREY STREET): Application of ANTHONY PIERRO seeking a special permit (nonconforming use/structure) and site plan special permit for the construction of a new 2.5-story single family residence with single-drive-under garage replacing home lost to fire.

Jorge Briones (architect) provided updated plans based on comments from DPW and Planning Board. There was a comment to limit runoff. They intend to show this detail when the plans are filed with the Building Dept. Regarding the third floor, they've provided a breakdown of the square footage by floor. The breakdown had the third floor mislabeled as "Attic Level". The third floor is larger than 50% of the second floor. Mr. Briones stated that that he can adjust the third floor to reduce the square footage.

Board opened to public comments.

Patty Correia (73 Kensington Lane) was present to speak on the proposal. She's concerned because it appears to be a four-story house. Mr. Briones then walked through an elevation of the proposed building. The site angles down toward Humphrey St (you drive up to the home). On the south side elevation, it appears as four stories because the basement level is viewable. He also went through the building height where the average is under 35 feet. M. Kornitsky asked when the fire was - Dec 2, 2014. Ms. Correia said she feels for the Pierros due to the fire and has no concern with the rebuilding as long as it's within the bylaw. She's concerned with potential for another fire and accessibility to the home. Mr. Briones said that they are considering a fire sprinkler system. They'll include that in the construction documents when filed with the Building Dept.

Mr. Briones also stated that they'd install a French drain to collect in a cistern.

MOTION : by D. Doherty to approve the application for special permits for the new construction of a two-half story home according to the plans as submitted with condition to incorporate comments from DPW (that the space where the water meter is located be heated), that the third floor be no more than 50% of the second floor, that there be stormwater mitigation methods satisfactory to DPW, seconded A. Rose, unanimously approved.

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.

The Board reopened the petition hearing.

Attorney Paul Lynch stated that the hearing started back at the January meeting when a presentation was made and discussion occurred with neighbors. There was an impasse regarding what the use would be on the property and a continuance was granted until March. There was then a further continuance to April due to conflict of schedules. During the time in-between, Mr. Patsios has attempted to meet with neighbors but hasn't received any response from the neighbors.

The building is a commercial building in the B-1 district and abuts residential properties. This occurs in other areas in Swampscott. There are other instances where auto uses abut residential uses. This is a large commercial building with large overhead doors and history for automotive use. They are seeking an automotive light service use as defined in the zoning bylaw. They are not seeking to go beyond the scope of the automotive light service.

Frank Orne (prior owner) provided a history of the uses through Mr. Lynch. Mr. Lynch stated they are looking for something less intense than the previous use.

Damon Seligson (attorney) spoke on behalf of various residents in the neighborhood (Joanne & David Reynolds 19 Pine St, Steven & Terry Gadman 11 Pine St). The Building Inspector issued a cease and desist in December. Nothing was done in response to that. They aren't just using it for light automotive repair, cars are on the street, there's vehicles being worked on at all hours of the night - not withstanding the cease and desist order. His clients come home from work and then have to deal with what's happening at the property. M. Kornitsky pointed out that this appears to be an enforcement issue with regards to the cease and desist.

M. Kornitsky stated that they could put conditions on the special permit to define light auto service. Other Board members stated that they couldn't do that because they'd then be redefine what's already provided in the bylaw. The Board then reviewed the definition from the bylaw. Mr. Seligson noted that the Board needs to make a finding that the benefit outweighs the issues. This is a hobby for the users in the building. A. Rose said that the issue is the hours. The property could be sold to someone else who uses it as a business for light automotive use. Mr. Seligson stated that there've been instances where work is happening until midnight. He asked that there be conditions on the permit that aren't currently specified in the bylaw such as hours, scope of use, extent of use, vehicles on the road. He said you can condition it to be within the spirit of the bylaw.

D. Doherty said that there needs to be additional fact finding to determine if it's a hobby. They're restoring cars. To him, it's the most intensive work you can do. It's not light auto work. They are completely rebuilding the car, it's major auto work. They appear to be putting engines in and rebuilding the frames. He thinks it's for the Board to determine that they will likely breach the limits of the special permit. If it's considered to be general auto, that's not allowed in the B-1 district. Assuming it's a hobby, then it's not really commercial, does it then fall in the table of uses. If not, then it's prohibited as non-stated uses are not allowed. He continued that you could do this in your own garage at home though. Other bylaws have a use for restoring cars, but Swampscott doesn't have that.

Mr. Lynch stated that they're asking for the particular use because the Building Inspector in December made a finding that a special permit for light auto service was needed based on what was occurring in the building. D. Doherty said he disagrees with the Building Inspector's finding in December. He asked "do they sell the cars after they rebuild them?" Assuming it's a hobby, D. Doherty said he isn't sure you can't do that there. D. Doherty said he was in the building on Saturday.

A. Rose and M. Kornitsky stated that if there's rent being charged to use the space, then it's commercial. Mr. Lynch said that they consider it a commercial use under light auto service. Andy said that the servicing of the cars is a commercial use. D. Doherty said if it's allowed, they could condition the permit and the space is well suited for it. A. Rose clarified that it sounds like he thinks it's a hobby if the people are doing the work on their own car after their day-to-day job.

Mr. Patsios said that there won't be any power tools (like air chisels) at any time with the doors open. It's a masonry and steel building with new double-paned glass windows. The building will be open during normal business hours. He suggested not before 7a, no power tools after 9p, nothing on Sunday that won't require power tools. Andy said he'd like to see the operating hours of the other auto uses in town to compare it to the request.

D. Doherty said that if general auto servicing was a permitted use, the Board could do it - but it's not allowed in the B-1. A. Rose said that they could allow the auto storage, the issue is working during off hours.

H. Pass asked how they'd do the body work. Mr. Patsios said it'd be done off site. Paul Lynch went through all the items that would be removed from the vehicle but repaired off site and then brought back to reinstall. Mr. Patsios

said there's no paint shop there, no spray booth. H. Pass said they could allow it with limited hours and keeping the doors closed during servicing.

Steve Gadman (11 Pine St) said that if the Board grants them the permit, he doesn't see any way this will be enforced. They haven't abided by the cease and desist and the Town isn't enforcing it. If the special permit is granted, they're done and they'll need to move. M. Kornitsky stated that if the Building Dept is enforcing they can appeal that action of the Inspector. Mr. Gadman said they'll then be stuck in a cycle of appeals.

Paul Lynch said that this speaks to the point that the neighborhood is vigilant about what happens at the building. In the past, they complained about the number of FedEx deliveries happened. The Building Dept had to look into those assumed violations but no determinations were made. He suggested 7a-9p Monday to Friday and 7a-7p on Saturday, closed Sunday.

Joanne Reynolds (19 Pine St) asked when the area was a used car dealership - 1935. The building wasn't built till 1945. She then asked what permit they currently have and what they're allowed to do? They were racing cars, tons of materials brought in, lots of loud cars on Saturday nights, lots of beer, there was a vehicle that came out of the building a different color, they hear people leave at 2a in the morning. All of this happened without a permit. If you give them a permit, it's going to continue. Harry said that what the Board can do is limit their hours to provide a peace of mind and make it better. A. Rose pointed out though that their point is that they're not allowed to do anything right now but are.

Franziska Salcedo (9 Erie St) asked what they're allowed to do right now and what hours. M. Kornitsky responded that the Board is focused on what they are seeking to do. The Board isn't hear to determine if what they've been doing is allowed.

Joseph Masano said that he had previously signed the petition with his neighbors. But he actually doesn't have an issue with it nor has he heard anything. He's friends with Doug Dubin who was working on the building. He asked to be taken off the petition. He asked the neighbors to allow them the special permit and see if they adhere.

Sherry Dagmin (Pine St) said that Mr. Patsios never came by but the neighbors waited for them.

Richard Salcedo (9 Eire St) also said that Mr. Patsios hadn't come around either and doesn't know anyone that was approached by him. If he gets a light vehicle special permit, will it allow them to work till 9p? He wants to know what improvements Mr. Patsios will make to the building to make it a more attractive property. A. Rose noted it could be conditioned on the special permit.

A. Rose wants to know what the hours are of other auto uses and that they reach out to the neighbors as well as making the improvements.

Alice McGuire (33 Pine St) asked if they can then stay in that building until the special permit is granted? M. Kornitsky said that's up to the Building Inspector as far as enforcement is concerned. She said they understand it's commercial. They have been the worst people that have been in the building, they aren't considerate of the neighbors. M. Kornitsky said they haven't decided if they are going to grant the special permit or not. There's still evidence that's needed.

H. Pass said that if the neighbors think they are operating in violation, their lawyer can handle it and appeal the lack of action by Building Inspector.

Mr. Seligson said he'll work with Mr. Lynch for a meeting.

Betty Johnson is in support of the project. The noise that's present is from the bar (Legion), not from this building. She hasn't seen any cars raising along the street.

MOTION : by D. Doherty, second by H. Pass, to continue the hearing to May 18. Unanimously approved.

PETITION 16-09 (141 HUMPHREY STREET) : Application of SWAMPSCOTT ASSOCIATES LLC seeking to amend a previously-granted petition in order to allow entertainment and functions at the restaurant. Map 2, Lot 184.

Marty Bloom (applicant) stated that they'd like to amend their previous special permits. He said he's received a number of requests to allow functions and events at the restaurant and on the roof deck. They'd also like background music and light entertainment on the roof deck.

M. Kornisky asked if anyone has any comments or questions - none other than to support it.

H. Pass stated that he has a restaurant nearby but doesn't have any conflict.

M. Kornitsky asked what type of entertainment they're looking for. Mr. Bloom said things like acoustic guitar, light reggae band (like 3 or 4 members). Nothing like what Red Rock had, just to allow people to enjoy the evenings on the summer. Think about happy hour with the sun setting over the water.

A. Rose suggested not limiting it and see how successful it can be.

M. Kornitsky asked if the entertainment is just for the deck. Mr. Bloom said yes and that means it'll be seasonal. He said he doesn't intend it for indoors. He doesn't feel live music is appropriate indoors for what they are doing at the site. They will have speakers indoors and just maybe some light entertainment indoors but rare.

A. Rose said that they could condition the time it could be allowed.

M. Kornitsky asked what months they'll have the deck open. Mr. Bloom said they'd like to use it as long as the weather is still good. M. Kornitsky suggested October as an end. A. Paprocki asked how late they'd want the music. Mr. Bloom said 9:30-10p. M. Kornitsky noted that the Beach Club has to have things off by 10p and thinks it's appropriate for this restaurant. Mr. Bloom said they'd be okay with that.

MOTION : by M. Kornitsky to approve the request to amend the original permit under 13-35, to permit the petitioner to have music, entertainment, and functions on the roof deck area. A sunset clause is placed to allow review at the October meeting. Hours for music is no later than 10p. All efforts should be made by applicant to orient the sound away from residential areas and towards the water, locating music and performers on east side of deck, and use acoustic performers when possible. Seconded by D. Doherty, unanimously approved.

PETITION 16-11 (47 WORCESTER AVENUE) : Application of PETER HOREMIOTIS seeking a special permit (nonconforming use/structure) and site plan special permit to add a second floor to an existing single-story residential home. Map 14, Lot 190.

Kristan Horemotis (applicant) provided updated calculations for the proposed addition as well as architectural plans and updated survey plan. The Board reviewed the updated materials. H. Pass asked who drew the plans. Peter Horemotis (applicant) stated Scott Hayward drew the plans.

A. Paprocki asked about the attic. It doesn't include living space.

M. Kornitsky asked if there were any comments from public - none.

H. Pass asked what triggered the relief request. The lot is under sized and the amount of added square footage triggered a site plan special permit.

MOTION : by A. Rose to approve the application of Peter Horemotis for special permit and site plan special permit to add a second floor in accordance to the plans submitted tonight. Seconded by A. Paprocki. Unanimously approved.

PETITION 16-12 (242 HUMPHREY STREET) : Application of TERESA SIRIGNANO seeking a use special permit and special permit (signs) to extend hours of operation and entertainment and to install an awning at Cafe Avellino. Map 2, Lot 146.

Ms. Sirignano (applicant) submitted the designs for the awning. The Board reviewed the design and discussed the need for an Administrative Site Plan approval by the Planning Board. The Board then discussed the requested hour extensions and appropriate hours to use.

MOTION : by H. Pass to approve the application of Teresa Sirignano for use special permit and special permit (signs) to extend hours and installation of awning with condition of the approval by Planning Board in the Administrative Site Plan Approval, and to allow operating hours to extend to midnight seven days a week (for cordials) and light entertainment and light acoustic to 10pm. Seconded by D. Dubin, unanimously approved.

Meeting closed at 9:40p.

S. Peter Kane
Director of Community Development