

SEPTEMBER 12, 2023 MEETING MINUTES

Received by Town Clerk

September 26, 2023, 10:37am

Time: 7:01PM – 10:15PM
Location: Swampscott Senior Center and Virtual via Microsoft Teams
Members Present: Heather Roman (Chair), Marc Kornitsky, Brad Croft, Anthony Paprocki, Paula Pearce, Susan Sinrich
Members Absent: Dan Doherty (Vice Chair), Andy Rose
Others Present: Marissa Meaney (Land Use Coordinator)

The Zoning Board of Appeals held a special meeting on September 12, 2023 to hear a petition filed by the Swampscott Affordable Housing Trust.

PETITION 23-11: 35 PITMAN RD / 7 HILLSIDE AVE

Petition by SWAMPSCOTT AFFORDABLE HOUSING TRUST c/o SAM VITALI, ESQ. Requests a Dimensional Special Permit, a Special Permit or Finding for Nonconforming Uses and/or Structures, and, if necessary, a Variance to determine if a historically significant two-family structure, currently located at 35 Pitman Road, may be relocated to an existing vacant lot at 7 Hillside Ave. (Parcel ID: 6-199 and 7-192)

- Attorney Vitali gave introduction to the Board
 - Stated that it is responsibility of Board to consider zoning only
 - Use of two-family home is among permitted uses in A3 zoning district
 - One purpose of zoning bylaw is to preserve historical and cultural assets of Town
 - Only relief needed is for frontage. Frontage cannot be enlarged, so any proposed use will need some kind of relief
 - The affordable housing component creates opportunity
 - Neighbors who signed petition in opposition live on lots of similar size and frontage
 - Hardship is not being allowed to host any of the one permitted uses for the zoning district
- Chair of the Historical Commission, Nancy Schultz, gave presentation about historical significance of 35 Pitman Road, known as the Richards-Pitman House
- Chair of the Affordable Housing Trust, Kim Martin-Epstein, spoke to the Board regarding the affordable housing component
- Bill DiMento, property owner of the lot at 7 Hillside Ave, spoke to Board regarding zoning history
 - Lot was granted variance for lot area relief in 1955 – variance is still valid and has not lapsed as it was issued prior to 1/10/1978
 - The singular issue remains the frontage
 - Case law Crosby vs. Town of Weston determined that governmental action was sufficient for variance
 - Stated that variances issued back then were not required to be recorded at Registry of Deeds, but still remain protected
- B. Croft contemplated whether affordable housing was good enough criteria for issuing variance; worried about setting precedent
- M. Kornitsky confirmed via case law search that 1955 variance for lot area still stands, and was granted under the circumstance that all neighboring lots have roughly the same area of 5,000 square feet. Variance is still needed for frontage.

- H. Roman stated that request for variance does not meet the definition established in the bylaw.
- B. Croft inquired as to why it took this long for petition to come before the Board. Nancy Schultz explained that first preference was to preserve the structure in place, and when that did not work, the Commission searched for an available vacant lot. Discussion was then had with Habitat for Humanity to try 40B project, but that ultimately fell through.
- The item was opened for public comment:
 - Dante Roberto – confirmed that he provided statement to the Board that was received. Reiterated some comments made in letter; Board asked that comment be related only to the zoning issue at hand.
 - Chris & Cheryl Toler – expressed their frustrations with the project and the opposition to the placement of the structure there, or the construction of any structure on that vacant lot. Heather Roman reemphasized the legal issue at hand, and explained that it is this issue that is guiding their discussion.
 - Francisco Tejada – Had question about historic nature of the home
 - Bob Rametta (of Marblehead) – provide additional information regarding the historical and structural significance of the Pitman House
 - Attorney Ken Shutzer – gave support of petition. Sat on the ZBA in 1991 when there was another variance granted for this lot that allowed construction of a single-family home, under the hardship that there was no other reasonable use for the lot. Believes that Board does have the authority to grant variance.
- Attorney Robin Stein of KP Law joined meeting via Microsoft Teams. Explained that only the state court could determine if variance has lapsed, but otherwise agreed with analysis given by M. Kornitsky, that if variance still stands, additional relief is still needed for frontage. A decision by the Board, either one of granting or one of denial, could stand an appeal either way. Therefore, the decision needs to be clear about what relief was previously granted and what is being newly contemplated.
- H. Roman read provision from zoning bylaw that states that frontage is not a sufficient reason to sustain a claim of hardship. B. Croft agreed, stating that conditions have to relate explicitly to soil, topography, or shape of land. No criteria that can otherwise define hardship. Attorney Vitali stated that there is case law that proves otherwise, and State law contemplates “financial hardship or otherwise.”
- M. Kornitsky stated that our local bylaw cannot further limit what the state already protects or allows, so there may be reason to consider a financial hardship. He pondered whether the cost to preserve a historic structure constitutes a financial hardship; B. Croft and A. Paprocki both stated it does not.
- The Board agreed that the nature of this petition bears a lot of information that is hard to process in one hearing. The Board asked for more time to consider the information and review the case law that Attorney Vitali referenced.

MOTION: H. Roman to continue petition to 9/19/23. M. Kornitsky seconds; unanimously approved.