



TOWN OF SWAMPSCOTT

ZONING BOARD OF APPEALS

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

MEMBERS
MARC KORNITSKY, ESQ., CHAIR
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BRADLEY CROFT, ESQ.
ANTHONY PAPROCKI
ANDREW ROSE

ASSOCIATE MEMBERS
RON LANDEN
HEATHER ROMAN
EMILY STUART

JUNE 20TH, 2017 MEETING MINUTES

Time: 7:04PM – 10:37PM
Location: Swampscott High School, 200 Essex Street, Rm B129
Members Present: M. Kornitsky, D. Doherty, A. Paprocki, E. Stuart, H. Roman, A. Rose, R. Landen, A. Rose
Members Absent: B. Croft
Others Present: Tariq Milton (Petitioner), David Haliotis (Designer), Gail Rosenberg (Resident), Amy Brackman (Petitioner), Carolyn Parker (Petitioner), Kenneth Shutzer (Attorney), Chris Drucas (Attorney), Kim Emmerich (Petitioner), Nick Perzazza (Engineer), Laurie Gajewski (Resident), Glen Ralphs (Resident), Sam Maxstead (Resident), Mike Ruiz (Petitioner), Alyssa Ruiz (Petitioner), Zaka Shafiq (Petitioner), Peter Barker (Resident), Amy Finlese (Resident), Lisa Welch (Resident), Judy Golditch (Resident), Christine Allison (Resident), Andrew Levin (Assistant Town Planner)

Chairman of the Board, M. Kornitsky called the meeting to order at 7:04 PM.

MEETING MINUTES

The meeting minutes from the Board's May 23rd, 2017 meeting (previously distributed to the Board) were reviewed.

MOTION : by M. Kornitsky to approve the 5/23/2017 meeting minutes, seconded by H. Roman, unanimously approved.

M. Kornitsky called forth Petition 16-06 Amendment. The applicant, Tariq Milton was present, but explained to the Board that his designer, David Haliotis, had not yet arrived. M. Kornitsky stated that the Board would wait to hear Petition 16-06 Amendment. M. Kornitsky called forth Petition 17-08.

ZONING RELIEF PETITIONS

PETITION 17-08

410 HUMPHREY STREET

This is a petition by Amy Brackman for a special permit (sign) for an already-installed secondary sign on the second floor of the structure at 410 Humphrey Street.

Ms. Brackman and her husband were present.

M. Kornitsky read the legal notice for the petition and asked the Ms. Brackman if there is anything that she would like to explain about the already installed sign and if she knew the exact measurements on the sign. Ms. Brackman replied that it is the same size as the other sign that she had for 6-years at an previous location of her business, 434 Humphrey Street. Ms. Brackman explained that the new location of her business has the same size sign as the last location, and stated that another business, that was approved after her first sign was approved, sig is the exact same size. M. Kornitsky asked for clarification regarding a sign on the first floor, Ms. Brackman stated that there is a sign there. M. Kornitsky asked Ms. Brackman if the first-floor sign is white, Ms. Brackman agreed.

Ms. Brackman stated that she believed it was important that the Board know the background of the building, including who built the building and the backstory of her renting the location. Ms. Brackman explained the building was a Papa John's at one point, and that the building is on an angle, and explained that "nobody" would rent the space that she now currently occupies. Ms. Brackman explained that her business is on the second and third floor, and accessible by stairs or an elevator. Ms. Brackman stated that previous to her to her business moving in, the location sat empty for five years, and that she and her husband took a "leap" and moved her business in. Ms. Brackman explained that the builder of the location explained to her that she could put up as many signs as she wanted. Ms. Brackman stated her concern was the angle of the building and that traveling towards her business from the direction of Mission on the Bay, travelers would not see the front of the building. Ms. Brackman mentioned a certain picture of the location, B. Croft asked Ms. Brackman for that picture, as the Board did not have it, Ms. Brackman's husband handed photos to the Board.

Ms. Brackman explained that she committed to a ten-year lease, and wanted to make sure people could find her on the second and third floor, and reiterated the comment made to her by the builder that she could put as many signs as she wanted on the building. Ms. Brackman mentioned that she thinks it is a beautiful building, and explained that she and her husband had invested \$200,000 into the business. Ms. Brackman mentioned that when it came time to move her business into the location, she met with the Director of Community Development, Peter Kane, and told him that she would like one sign on the left side of the building because of the angle, so people coming from Marblehead, Nahant, Lynn, and Boston can see where the business is located. Ms. Brackman mentioned that you can "really not see" the location from standing in front of Jack Conway's. Ms. Brackman stated that P. Kane told her that the sign on the first floor is "plenty" and that is all the location is zoned for, and that there can be no more signs. Ms. Brackman explained that P. Kane continued to state that she would have to take down the Jack Conway (the other buildings tenant) sign and put up another sign that houses her business and the Jack Conway sign on the first floor.

Ms. Brackman continued that P. Kane explained to her that she would have to put up a bigger border, Ms. Brackman mentioned that she was concerned because she did not believe Jack Conway would take down their sign and help pay for a bigger sign with her business on it, and added that she did not believe the building's owner would do it either.

Ms. Brackman stated that she went back to P. Kane and explained that she needed to put a sign up, due to her second and third floor location. Ms. Brackman stated she needed the second sign because people did not know where her business was, and that she wants a sign on the other side of the building as well. Ms. Brackman stated that P. Kane told her that if she goes before the Zoning Board then he will recommend the Board deny the application. Ms. Brackman stated that P. Kane explained that the extra signs were "like advertising", and Ms. Brackman stated to P. Kane that this is her business, not her home.

M. Kornitsky mentioned that he was on the Board when the Ms. Brackman's sign at her other location was applied for. Ms. Brackman asked for clarification on which location, and if it was the one from 10 years ago, M. Kornitsky agreed. M. Kornitsky mentioned that he remembered Ms. Brackman coming before the Board a couple of times, Ms. Brackman stated this is her third expansion.

M. Kornitsky stated that if he remembered correctly, she had received relief in the form of a special permit (sign) from the Board, for a specific sign at the older location. Ms. Brackman stated that she was "glad [M. Kornitsky] remembered that", and then explained that the sign located on the second floor (of her current business) is white with black lettering stating the business's name, and that this sign was approved. Ms. Brackman explained that she paid \$600 extra to have the sign put up in the location where it was, then stated that the Town came and told her that she needed to take it down, and put it in Black and gold, M. Kornitsky stated that this is what the sign Bylaw states, Ms. Brackman stated that it didn't state that when she first had her sign done at the other location. Ms. Brackman stated that she had to have two signs removed and repainted and re-hung.

Ms. Brackman's husband mentioned that they had taken the approved sign and moved it next door, B. Croft asked for clarification. Ms. Brackman stated that at her old location, 434 Humphrey Street, the sign (sign currently up at 410 Humphrey Street) was hanging there, and that when she first moved into 222 Humphrey Street (another location) that there were problems regarding the awning on the property. Ms. Brackman continued to explain that three years later, when she moved to 434 Humphrey Street, she was able to get a sign with her colors, a white sign with black lettering, and mentioned that the "Town" then changed the Bylaws and she had to pay for the sign to be taken down and re-done, and put back up.

M. Kornitsky mentioned that it was not the "Town", but rather Town Meeting who voted to change the sign Bylaws, and mentioned that he understood that it is difficult for the business owner. Ms. Brackman stated that she already had approval on the sign and then the Town made her take the sign down, and added she did not see anyone else in Town take their sign down. M. Kornitsky explained that he was involved in a case from the past, in which a doctor was made to take his sign down and then revert back to an original sign.

Ms. Brackman stated to the Board that there have been many businesses in Town that have shut down over "no support", and stated that she would close her business. Ms. Brackman then mentioned the previous case M. Kornitsky had cited, and asked if her case would similarly go through litigation. M. Kornitsky clarified that he mentioned this case because Ms. Brackman had stated that the Town had not made anyone change their signs, and yet they had. Ms. Brackman explained that the past case was different and that the Doctor wanted a hanging sign (Ms. Brackman

mentioned she signed a petition related to the case), M. Kornitsky clarified that the Doctor wanted his sign to be similar to Ms. Brackman's, and not a hanging sign, Ms. Brackman and M. Kornitsky briefly discussed this past petition.

Ms. Brackman stated to the Board that she and her husband have been in Town for almost 10 years and that no one from the Town had ever come into her business and asked her "how's it going?" M. Kornitsky explained that he appreciated these concerns, but that this is not the forum, and explained those concerns are for the Board of Selectmen.

M. Kornitsky stated that he had previously asked about the size of the sign, and added that Ms. Brackman did not have that information. Ms. Brackman responded that it is the same size as the sign that was approved six years ago.

M. Kornitsky explained that there is a requirement in the Bylaw that states for a petition (Zoning Board application), that any prior decisions that affect the relief sought should be attached to the petition, Ms. Brackman responded by asking if she was grandfathered in? M. Kornitsky explained that Ms. Brackman is supposed to tell the Board if she is or not and to attach previous decisions to the petition. Ms. Brackman responded that there are pictures missing from the application, and that not once did P. Kane tell her she needed to give the actual measurements of the sign, M. Kornitsky explained it is a requirement in the Bylaw.

M. Kornitsky asked if Ms. Brackman agreed that the second-floor and first floor signs have different colors, Ms. Brackman stated that they are clearly different. M. Kornitsky asked Ms. Brackman to clarify the timing on when the signs were made and put up, Ms. Brackman stated the first-floor sign went up 7 years ago.

M. Kornitsky asked why the first-floor sign is a different than the second-floor sign at her new location, Ms. Brackman explained that the first-floor sign went in when she first moved into the business. Ms. Brackman explained that she wanted to create a "new light flow" to her business, and mentioned that within six weeks of moving in, an employee stole her business and three staff members. Ms. Brackman continued that she was in a tough position financially, and in desperation had asked her brother-in-law to put a sign up so that she could continue her business. Ms. Brackman stated that she thinks the sign is "pretty nice" and explained that there is no neon or flashing lights, and stated that the colors are in compliance with the Bylaw. Ms. Brackman then stated that her sign is white, and that Jack Conway's sign is red, and then asked the Board "if it really makes a difference?" M. Kornitsky explained that the Board's jurisdiction is to apply the Bylaw, Ms. Brackman responded that there are new businesses on Humphrey Street that have signs that are not black and gold. M. Kornitsky continued that the Board has to apply the Bylaw fairly, Ms. Brackman stated that the Board is not, M. Kornitsky responded that there can be different Zoning districts or businesses that are grandfathered in. Ms. Brackman asked "who is grandfathered-in more than" her business and Newman's bakery. M. Kornitsky asked Ms. Brackman how long she has been at the location for, Ms. Brackman responded that she has been in this new location for one year, but in the Town (on June 30th) for 10 years. M. Kornitsky responded by explaining that Zoning is unique to each property, and that it does not travel from one property to the other, and that if a move occurs to another property, you are bound by the Zoning in effect at that time.

M. Kornitsky then moved on and explained that the Board has looked at the sizing and issues with the coloring. B. Croft mentioned that he understands Ms. Brackman's frustration, but went on to mention that in the Town Bylaw there are requirements on sign sizing, and explained that's why knowing the size is important for the Board to consider the petition. Ms. Brackman stated that her sign is no different than the sign at her last location. B. Croft clarified that the Bylaw creates certain requirements on sizes, and properties are obligated to operate within those requirements. B. Croft continued that if the sign does not meet the requirements, then there are other considerations the Board can take into account to see if relief should be granted. B. Croft explained that this is part of the process, and this is why M. Kornitsky is asking these questions. B. Croft also clarified that P. Kane is not on the Zoning Board or a deliberating member of the Board.

Ms. Brackman stated that she has received citations that equal up to \$8,100, and that someone had visited her husband's restaurant and mentioned that the Town does not have any "legal administration" to give a dollar citation, and asked the Board why she is receiving citations? M. Kornitsky asked if the citations were regarding the sign, Ms. Brackman responded yes, that they are \$300 a day. M. Kornitsky asked if these citations were from the Building Inspector, Ms. Brackman stated they were from the "Town", and then asked if the Board had the citations, M. Kornitsky stated that they did not. M. Kornitsky explained that if there is a determination of the Building Inspector, that a person has the ability to appeal to the Zoning Board. M. Kornitsky explained the Board would then hold a "de novo" hearing, which he explained is a hearing of "first impression".

Ms. Brackman asked the Board why they did not have the citations in front of them? M. Kornitsky asked if Ms. Brackman had engaged counsel over this situation, Ms. Brackman responded that this is why she is in front of the Board.

M. Kornitsky then clarified to Ms. Brackman that the Bylaw states that each business shall be permitted to have one sign attached (Ms. Brackman handed the Assistant Town Planner copies of the citations) flat for each commercial use. Ms. Brackman responded that her business is taking up two floors, and her business is not on the first floor (where one of the signs are). M. Kornitsky clarified to Ms. Brackman that she is looking for the Board to give her relief.

A. Rose asked if there was the possibility for the Jack Conway sign and her sign to be combined, and if that would make it a “directory”, which could allow Ms. Brackman to have another sign.

B. Croft asked Ms. Brackman what the name of her business is, Ms. Brackman responded “LuxeBeautiQue”, and then explained that when she moved into the larger location (410 Humphrey Street) that she wanted a larger “umbrella” and called it “The Beauty Loft at LuxeBoutiQue”, because there are two floors and a larger space. Ms. Brackman stated that the Town should be thinking about businesses and safety, and explained that perspective customers could become distracted, searching for her business while driving. Ms. Brackman stated to the Board that if the sign “is large enough for people to see it, and not offensive, and it’s not neon, and it’s not bright, and it’s not tacky” then what is the problem, and mentioned that the sign was preapproved.

R. Landen explained to Ms. Brackman that her sign was preapproved for another location, but added there is no evidence of its approval, and mentioned that he believes she is receiving citations because she does not have a permit for the sign at the new location. R. Landen clarified that Ms. Brackman was in front of the Board to try and get relief from the Board to have and keep the sign, as well as stop the fines. R. Landen explained that different districts have different rules, and the Board is trying to see how this sign fits into these rules. Ms. Brackman then pointed out in a picture, she handed to the Board, the “neon blue” sign of Thai Thani restaurant, M. Kornitsky mentioned that they are grandfathered in, Ms. Brackman responded that she is grandfathered-in as well because she has been in Town for ten years. R. Landen responded that she is not grandfathered-in at her new location. Ms. Brackman’s husband mentioned a business next door to her location, R. Landen explained that this business is in a different zoning district.

B. Croft then clarified that even though the sign does not comply with what the requirements state, there are still ways, if the petitioner satisfies other criteria, that the Board can still grant relief. B. Croft continued that he appreciated everything that had been said, but mentioned the first step in this process is understanding if the sign is in compliance with the existing Bylaw. B. Croft continued that the Board cannot change the Bylaw, and explained that the Bylaws afford an ability for the Board to grant special permits if certain other conditions are met, clarified that this is the relief Ms. Brackman is seeking.

M. Kornitsky then read from section 3.4.2.1.v in the Bylaw regarding signage and different floors of a building. M. Kornitsky mentioned that the language was as close as the Board could get to a specific section of Bylaw to grant relief under. M. Kornitsky and B. Croft both decided that the relief should be under special permit criteria, under section 5.3.2.0. B. Croft explained that this should be looked at with special permit criteria, due to the unique angle and building. M. Kornitsky brought up A. Rose’s comments about the possibility of the first-floor sign being viewed as a directory. B. Croft asked if the business operated on the first floor, M. Kornitsky clarified the second floor. E. Stuart added that she believes perspective customers need to know where to enter the business, and that Ms. Brackman needs the first-floor sign.

A. Rose mentioned that they could make both signs uniform and some other ideas as well. R. Landen mentioned that the Jack Conway sign does not need to be black. A. Rose disagreed and R. Landen read the bylaw language aloud. A. Rose asked what her sign colors are, M. Kornitsky mentioned white and gold. E. Stuart mentioned the branding is different, B. Croft mentioned the name is also inconsistent. B. Croft mentioned that he also believes that due to the angle of the building, that the sign on the second floor is not flush against the street, and that it is set back. Ms. Brackman added that the whole building is setback and on an angle and that this makes it difficult for people to see the businesses.

M. Kornitsky asked if the petitioner had thought about a projection sign, Ms. Brackman replied that she had, Ms. Brackman’s husband mentioned that they thought of doing a blade sign, but that P. Kane did not agree to it.

A. Rose discussed how the possibility of a blade sign would look and be done on the building. M. Kornitsky mentioned that he would love to see a projection sign on the first floor, Ms. Brackman stated that this would cost a lot of money. M. Kornitsky mentioned that the Board could give her the option to change the sign to a complying projection sign.

Ms. Brackman explained some of the difficulties of owning a business, including that businesses are trying to create “a vision”, but that the Town can put a “damper” on things. Ms. Brackman added that a projection sign would be great, but that restrictions limit the size too much.

The Board briefly discussed what a blade sign would look like on the building. Ms. Brackman began to explain a concern she had with doing business in Town, but M. Kornitsky explained that the Zoning Board was not the forum for these concerns, and R. Landen added that the Board did not have jurisdiction on the concerns.

M. Kornitsky asked the Board members if they had any questions. H. Roman mentioned that is an already existing sign and that “ideally” it would line up with the other signs.

M. Kornitsky asked if there was anyone in the audience in favor.

Gail Rosenberg (56 Middlesex Ave), Lisa Welch (118 Atlantic Ave), Judy Golditch (who stated she also owns a business in town, and one previously at 222 Humphrey Street), and Christine Allison (8 Bay View Drive) all stated they are in favor.

M. Kornitsky constituted the Board as; himself, A. Rose, H. Roman, B. Croft, and A. Paprocki.

MOTION : by M. Kornitsky to close the public hearing, B. Croft seconded, unanimously approved.

MOTION : by H. Roman to approve petition 17-08 to grant relief for signage at 410 Humphrey Street, the existing non-permitted sign as is existing, no conditions, seconded by A. Rose, unanimously approved.

PETITION 16-06 AMENDMENT

55 BERKSHIRE ROAD

David Haliotis (who was absent when the petition was originally called at the beginning of the meeting) had arrived at the meeting, M. Kornitsky called forward the petitioner and their representatives. Tariq Milton (the petitioner) and David Haliotis (designer) were present. M. Kornitsky mentioned that the Board received, via email, revised plans. Mr. Haliotis handed the Board full scale plans and a list of what had changed from the originally approved plans. Mr. Haliotis mentioned that the plans have somethings that were asked for, and the list has what has changed. R. Landen asked if the changes are from the original approved plans, or if they are from the April Meeting, Mr. Haliotis responded by going through the changes that were shown on the map. Mr. Haliotis explained that they have removed the round windows, and it is an ongoing process from the original. Mr. Haliotis then explained the step landing on the home and why it changed.

M. Kornitsky asked if Gail Rosenberg (who was present), an abutter, had received a full set of plans, Ms. Rosenberg explained that she had not, M. Kornitsky asked Mr. Haliotis to hand her one.

M. Kornitsky wondered if Ms. Rosenberg, Mr. Milton, Mr. Haliotis, and any other abutters wanted to step outside of the meeting and discuss the plans and changes, and then come back before the Board, and the Board would decide whether to continue or not. Ms. Rosenberg mentioned that she had met with the petitioner the previous week, and that she had seen the drawings but did not see the list of changes. Ms. Rosenberg mentioned that from the drawings, with the exception of no railing (on the front landing), there had been a good effort made to meet some of her concerns. M. Kornitsky asked if she feels comfortable going forward, she did, M. Kornitsky withdrew his idea, and the hearing continued.

Mr. Haliotis and M. Kornitsky briefly discussed the changes using the maps provided. M. Kornitsky asked for clarification on the round windows being removed, Mr. Haliotis showed an elevation map that had the round windows removed. M. Kornitsky brought up the change that the step landing was reduced to 12 feet 5 inches. Mr. Haliotis explained that when he first came in, it was the entire platform that was built, but he spoke with the owner who said they could reduce it. M. Kornitsky brought up the change to the height and dimensions of the front stairs, Mr. Haliotis responded that at the last meeting the wrong dimensions were given, and mentioned they are proposing to have the platform 2 feet 6 inches (30 inches) high, and be allowed to not have a railing, as the building code states. M. Kornitsky for clarification, asked if there would be a railing, Mr. Haliotis responded there would not be. Mr. Haliotis explained they are keeping three steps, and a landing that is three feet, and adding pavers.

Mr. Haliotis and M. Kornitsky discussed what is remaining and what is changing, including facing a certain area with brick veneer.

M. Kornitsky asked about the landscaping, Ms. Rosenberg mentioned that the air-conditioning unit facing her will get covered, Mr. Haliotis showed where plantings will be added.

M. Kornitsky mentioned that he noticed on a map provided that the front door would be changing, and noticed other changes as well.

M. Kornitsky then asked to hear from Ms. Rosenberg's comments on the changes. Ms. Rosenberg mentioned that she appreciated the owner trying to make the building fit in more, and added that she did not think that Mr. Milton would need to seek specific relief for the air conditioning unit being on the opposite side then what was proposed. M. Kornitsky mentioned that there is a possibility it would need relief because it was a change from the approved plan.

M. Kornitsky asked if Ms. Rosenberg is satisfied with the proposed screening, and mentioned Mr. Haliotis and Mr. Milton have made some other steps as well, Ms. Rosenberg agreed.

Ms. Rosenberg mentioned that if the height of the front platform is not above 30-inches then the owner is not required to have a railing. Ms. Rosenberg explained that she thinks it is great that Mr. Milton and Mr. Haliotis worked with her, but mentioned that she is concerned that the changes will not be made. M. Kornitsky explained that the Boards issues a decision, and stated that it is then up to the Building Inspector to enforce compliance, but added that the petitioner had made these changes and have worked with neighbors, and stated that he believed they were here in good faith.

Mr. Haliotis mentioned that the Building Inspector had issued a temporary Certificate of Occupancy, and then explained that the Building Inspector is probably waiting to hear the outcome the meeting before his next decision.

M. Kornitsky then asked if any other abutters wished to speak.

Amy Finlese, 390 Paradise Road explained that she is not an abutter to the property, but a Swampscott resident, and stated that she needs to know if Mr. Haliotis is a licensed architect. Mr. Haliotis explained that he is schooled, Ms. Finlese asked again if he is licensed and mentioned that in regards to the licensing Board he is not. Mr. Haliotis explained that Douglas Haring is the licensed architect for the plans.

Ms. Finlese mentioned that it was unclear if he (Mr. Haliotis) was licensed. And also raised concern over what was built, the short notice on providing a list of changes, and code issues at stake. Ms. Finlese added that it is against the law to represent oneself as an architect, and stated that she is an architect, and that it is frustrating to see her profession represented this way.

M. Kornitsky asked Mr. Haliotis who signed the plans, Mr. Haliotis stated Doug Haring, a licensed architect and his business partner signed the plans. M. Kornitsky explained that the requirement is to have architectural plans stamped by a licensed architect, which he mentioned they are, and stated that Mr. Harings signature is sufficient enough for the Board to decide. M. Kornitsky explained that the questions on licenses are not the Boards jurisdiction.

B. Croft asked if Ms. Finlese had any information that something provided to the Board was incorrect. Ms. Finlese responded that she was curious about the process, and mentioned that at the previous meeting there was a request for a list, and added that the home was already built and occupants moved in, and wondered how final approval of these "piece-mail" changes will be approved. Ms. Rosenberg reiterated the need for a list showing what was proposed, what was built and what is being proposed, as a matter of legal record.

M. Kornitsky mentioned that he has a stamped plan that showed the revised elevations that are being proposed, and it would become part of the file. M. Kornitsky added that he has plans signed by Ralph Reid (surveyor) which showed the dimensions of the steps and location of the other structures built. M. Kornitsky then suggested, as a condition, that the project be required to be built in requirement of the June 16th and Ralph Reid's April 26th plans, and clarified this with Mr. Haliotis and Mr. Milton.

M. Kornitsky mentioned that he was the one who requested the list, and mentioned that he has limited jurisdiction, but that the proposed changes are a good compromise. M. Kornitsky mentioned that he is looking to approve the plans that are stamped and in front of the Board, and reiterated that what is being done is good. M. Kornitsky explained what could happen if the Board denied the changes.

M. Kornitsky stated that procedurally this petition did not go right, and there were many mistakes, but there is an opportunity to remedy these mistakes.

M. Kornitsky stated that he is going to vote in favor of the new plans and hold the owner to the approved plans. M. Kornitsky asked how the Board felt, B. Croft mentioned that he appreciated what M. Kornitsky is explaining, but mentioned this is all up to the Building Department granting a final Certificate of Occupancy (COO). B. Croft asked if there is a final COO, M. Kornitsky mentioned there is a temporary one, and added that this could be a part of the relief, if it is granted, that a final COO not be granted until the building meets the approved plans.

R. Landen asked how long the temporary COO was good for, Mr. Haliotis believed it to be 60 days, M. Kornitsky mentioned that there is probably an opportunity to extend it.

M. Kornitsky closed the public hearing.

The Board was constituted as the five regular members; M. Kornitsky, D. Doherty, A. Paprocki, A. Rose, and B. Croft.

MOTION : by B. Croft to amend the prior special permit, in conformance with the plans dated June 16th, 2017 and the survey dated April 26th, 2017, and no final Certificate of Occupancy to issue till there has been full compliance with both of those plans, D. Doherty seconded, unanimously approved.

M. Kornitsky thanked Mr. Milton for his effort to work with the abutters, as well as thanked the abutters for their patience and work. An abutter thanked the Board.

M. Kornitsky called forth Petition 17-09, which is an application by David Emmerich appealing the determination of the Building Inspector, that the exterior lights on the property (11 Tip Top Road) are no longer in violation of Bylaw section 3.4.2.0. The petitioner states that the lights cast directly on their adjacent property. Continued from the May meeting, but being heard for the first time.

M. Kornitsky welcomed attorney Chris Drucas, who stated that he is representing the petitioner, Mr. Emmerich, who was not present, but explained that his wife Kim Emmerich was, along with Nick Perzazza an electrical engineer who is Leed qualified.

Attorney Drucas began by explaining that he is before the Board in the appeal of the Building Inspector, who stated that he (the Building Inspector) did not think the lights on 11 Tip Top Road were no longer in violation of section 3.4.2.0.

Attorney Drucas provided plans and two different reports to the Board, one from March 2016 by Thomas Lemmons (Attorney Drucas explained Mr. Lemmons is also a professional lighting engineer) and one from Mr. Perzazza (who, Attorney Drucas stated will address the Board later in the hearing). Attorney Drucas explained that this problem has been ongoing for “well over a year-and-a-half”, and explained that he knows that the current and former Building Inspectors were involved in the process. Attorney Drucas explained that findings were issued several, that stated there were problems and violations of the applicable section of Bylaw. Attorney Drucas stated that the current Building Inspector has “pursued” this matter and yet, with money previously spent by the people living at 11 Tip Top Road, the situation has not been solved, which Attorney Drucas stated is his opinion (the problem being solved) and the opinion of his client, and Mr. Perzazza. Attorney Drucas continued to state that the existing fixtures do not comply with the requirement of being properly shielded, and that he had photos of the lights taken in May.

M. Kornitsky asked if the owner of 11 Tip Top Road was present. A lady in the audience explained that her father owns the home, but that she lives there, and added that her father was not present.

Attorney Drucas handed the Board the photos, and explained the photos have captions describing the times and areas they show. Attorney Drucas explained where the photos were taken from; the rear patio (looking from 45 Phillips Beach to 11 Tip Top), a second location on the patio, the second floor balcony (off of the master bedroom), the third floor balcony (off of a bedroom), the second floor master bedroom door (which leads to the balcony, and has shutters on it, to which Attorney Drucas commented that the owners (45 Phillips Beach) say when the shutters are open it is reminiscent of daytime in the room due to the lights), and a second floor other bedroom (looking out the window).

Attorney Drucas stated that the photos were taken on May 14th, 2017, which post-dates the Building Inspectors findings. D. Doherty asked the number of lights that are causing problems, Attorney Drucas stated three. B. Croft asked for clarification on the location of the home shown in the photos and asked which side of the street 11 Tip Top Road is on when driving down the street, Attorney Drucas explained that the home is at the end of Tip Top Road. B. Croft asked which side of Phillips Beach Ave, the resident from 11 Tip Top stated that you cannot drive past Tip Top Road, M. Kornitsky and Attorney Drucas helped clarify for B. Croft. B. Croft explained he is trying to understand where the lights are positioned, and he and Attorney Drucas discussed briefly.

Attorney Drucas mentioned that at one point his client had offered to pay for the correct type of light fixtures to be put on the building (Attorney Drucas explained that the offer was to either provide them, put them up, or pay for them to be put up), but that the offer was not accepted. Attorney Drucas continued to explain what he believes the pictures show. Attorney Drucas stated that somethings have been done, (Attorney Drucas mentioned that Steve Hayes had built some structures to try and shield some of the lights). Attorney Drucas stated that he has letters from the first electrical firm to observe the site (Billups Solutions), which stated that they went and adjusted flood lights on two occasions and that at the time there were no accessories for that particular type of fixture (rise or scoop), a programmable timer was mentioned in the letter, as an option (which the letter stated “could provide useful on what time the lights go off for the night which may help). Attorney Drucas stated that this letter was from April 2016.

Attorney Drucas stated that Mr. Hayes returned to the property and tried to provide some shielding for the lights, which Attorney Drucas stated did not work. Attorney Drucas stated that another electrical firm was brought in, and read the tasks complete off of an invoice from the firm. Attorney Drucas read that the firm replaced the LED light on the outside with new residential LED light, and added that nowhere did it say that the lights were screened, but mentioned they had scoops.

Attorney Drucas continued to explain that Mr. Lemmons went to the property in March 2016 (Attorney Drucas mentioned that the Board has a copy of this report). Attorney Drucas then read from the report that the lights were in violation due to the reading, but also the nature of Bylaw section 3.4.2.0, that the Bylaw does not have specific reading for residential sections, but it does say to not cast light on adjoining properties.

A. Rose asked if there was a foot-candle reading, Attorney Drucas mentioned that Mr. Lemmons was going to get a reading, but unfortunately had a medical emergency and was not able to, and this is why Mr. Perzazza is present. A. Rose asked Mr. Perzazza if there was a foot-candle measurement, Mr. Perzazza stated yes, he did take some readings, but explained that he would like to update some of the information in the report the Board had. Mr. Perzazza explained that there are two properties, and that light travels across the boundary, which he explained is usually measured in illuminants readings. Mr. Perzazza stated that section 3.4.2.0 does not have language regarding illuminants readings, but there

are sections in the Bylaw about requirements for illuminates across boundaries, but these are related to parking lots, and mentioned it's unclear whether 3.4.2.0 is trying to bring those "into play" for residences, and that Mr. Lemmons had mentioned it in his original report. A. Rose mentioned that he is speaking in parking lot language and asked Mr. Perzazza if the foot-candles at the property line have a measurement. Mr. Perzazza stated that in the report it listed .1 at the property line, A. Rose asked in terms of parking lots, where you're not supposed to shield off property, asked what the Bylaw says. Mr. Perzazza explained the Bylaw, and that this is a light trespass issue, and that the problem created by the shielding does not have specific Bylaw language. Mr. Perzazza explained the terms are wrong and stated that for illuminants it is .2. Mr. Perzazza states that the reading is below .2, but that this number (.2) is for parking lots. Mr. Perzazza continued to state that this is for "light trespass" issues. Mr. Perzazza stated that the glare issue, which the shielding brings into play, does not have a quantifiable value, Mr. and that the number is very high, that the standard in the bylaw "basically" says that there must be shielding so that the ambient light is not receptive, which Mr. Perzazza states is a very high standard and is hard to meet.

Mr. Perzazza mentioned that due to the geometry of the property, there is a neighbor below the property and that the lighting on the upper property is very high, and that the shielding does not shield the source from the property below. Mr. Perzazza stated that the shield almost "exacerbates" the issue, the diffuse light surface gives a bigger glow. Mr. Perzazza used the pictures to explain and show that the center light pattern gives a bigger glow. Mr. Perzazza stated that it looks like a "wood veneered" shielding was constructed to shield the lights, which Mr. Perzazza stated that this worse because it creates a diffusive pattern, and explained that you should use a commercial grade "barn door" or "glare shield" that are almost always dark, with the idea of, as Mr. Perzazza explained, "capturing the light", rather than reflecting it back out. Mr. Perzazza stated the main issue is that it's very hard to meet the order of shielded requirements with the current locations geometry without some sort of sphere shielding.

Mr. Perzazza explained that if he was to guess on the design intent of 11 Tip Top road, they are trying to light the paved area between the house and the garage. Mr. Perzazza stated that he put up the lights, he would put the lights on the garage because it would face away from the neighbors, not towards them. B. Croft asked Mr. Perzazza if that is how he would do it, Mr. Perzazza stated it would come down to what the concerns are, and did not want to interpret what 11 Tip Top Road is doing, but added if his intent was to light the parking area between the home and garage then yes, that is how he would light it.

B. Croft asked Mr. Perzazza if he thinks the current lighting violates the Bylaws, Mr. Perzazza stated that he does. B. Croft then asked him how he would light the area while complying with the Bylaw. Mr. Perzazza explained that if he had to work with existing lighting locations, then different types of fixtures could be used. Mr. Perzazza stated that he originally thought that the fixtures were typical residential floodlights that cast light out, but his recommendation would be for a "cylinder down" light, which directs light downward. Mr. Perzazza stated that it looks like 11 Tip Top Road have adjustable lights that can be aimed, but they are directed in direct view of the neighbors.

B. Croft asked if based on the height, and unique position of the property, if any light on the exterior of the house will be visible, Mr. Perzazza asked if he meant visible light or source, and stated if you can shield the source, which he believed is the main intent of the bylaw. Mr. Perzazza stated when you produce any light on a wall it creates a little glow and added that the issue is the brightness of the direct view of the source, which he believed is what the abutters are seeing. Mr. Perzazza then mentioned two other possible fixtures that could be used.

B. Croft stated that the Bylaw states that the lighting source should be shielded from view, and the level of illumination lighting should be low, so as to reduce the glow. B. Croft clarified that this meant not to eliminate, but reduce the glow of ambient light on the adjacent properties, Mr. Perzazza agreed. B. Croft mentioned that the intent would be recognizing that there is some level of illumination, Mr. Perzazza stated that is true. Mr. Perzazza then mentioned the issue is if it's possible to shield the source on a property that high, which Mr. Perzazza stated would be very difficult, B. Croft added "if not impossible". Mr. Perzazza went through possible changes that could be made, such as "snouts", which he stated is not uncommon.

Attorney Drucas stated that on several occasions the petitioners invited the Building Inspector to come and view the lights from inside their house. Attorney Drucas explained that when the building inspector performed site visits, he did not go in the house and see the effects of the lighting, and that the Inspector made observations from the street level, and reiterated that he never entered the house. Attorney Drucas explained that the Building Inspector made his observations from 360 feet away, and that from the back of 11 Tip Top Road to his client's home is about 160 feet. Attorney Drucas mentioned that the Building Inspector focused on the one light on the upper left of the home, but that all along the petitioner has complained about three lights. Attorney Drucas explained that on multiple floors, the light keeps entering into the bedrooms. B. Croft asked if there were pictures of the shields, Mr. Perzazza, the Board, and the resident of 11 Tip Top Road then discussed the photos and what they show.

M. Kornitsky asked if Attorney Drucas wanted to add anything else, Attorney Drucas asked for the opportunity to respond after hearing from the resident of 11 Tip Top Road.

R. Landen asked the applicant if the two different reports (2016 and 2017) have one from before shielding and one from after shielding, Attorney Drucas added "shielding and whatever else they did". R. Landen asked what kind of remediation was done. Attorney Drucas mentioned that the shielding did have some effect, but not enough. R. Landen mentioned that he is looking at the illumination values, before and after, and observed

significantly lower numbers in the recent report. Mr. Perzazza responded that the brightness is what the eyes respond to, not the value of the illuminants, and explained that the value of illuminants are measured from light from the ground, not from the upper eye level, which is the intrusive amount. Mr. Perzazza stated that when looking at a source, it is the brightness that is of concern, not the illuminants, and there are no values to show this.

M. Kornitsky asked for testimony or evidence in opposition of the petition from the resident of 11 Tip Top Road.

Laurie Gajewski, 11 Tip Top Road, began by asking the Board if they have any questions for her. B. Croft asked her what she is trying to achieve with the lights, specifically if she is looking to light up her driveway, doorways, or paths? Ms. Gajewski explained the lights have been in the same spot for 30 years, and that the home sits on “almost two-acres” with no street lights and that it is “pitch black”. Ms. Gajewski added that she has had to call the police “numerous” amounts of times since the petitioners moved in, and that she has constant problems at her house. Ms. Gajewski stated that she does not think it is fair to be made to live in darkness at her house.

B. Croft asked for some clarification on the problems between neighbors, and why she had called the police. Ms. Gajewski mentioned that someone had climbed on her house and had unscrewed the lights, repositioning them to face into her home. Ms. Gajewski stated that the Police told her to get a security system, and cameras. Ms. Gajewski explained that she has lived in the neighborhood for 45 years and grew up next door, and that there were never issues till her neighbors moved in, and mentioned that the lights were unscrewed and turned around. B. Croft asked if safety issues are the reason for the lighting, Ms. Gajewski responded that she is trying to light her whole property.

D. Doherty asked Ms. Gajewski how long she has been living at the property for, and how long the lights had been there for as well as if any changes have occurred to the lights. Ms. Gajewski explained that she had been living at the home for 30 years, and that the lights have been there the whole time, and that years ago the lighting fixtures were broken and then were changed. D. Doherty asked, that if when they were changed, did the brightness or position change, to which Ms. Gajewski stated that the Building Inspector and the “light inspector” “OK’d” it, and she received permits for everything.

D. Doherty asked if the lights are on a timer, Ms. Gajewski stated they are on a light sensor, and stay on all night. D. Doherty asked Ms. Gajewski what the purpose of the lights are, she replied for her safety, and that it helps because it is “pitch black” where she lives. D. Doherty asked Ms. Gajewski if she thinks it’s necessary for all three lights to be on, she replied yes, and mentioned to her it is. M. Kornitsky asked if there are any exterior lights on the garage, Ms. Gajewski replied no, and stated there is no electricity. D. Doherty asked Ms. Gajewski if it would be possible to reposition the lights away from the neighbors, Ms. Gajewski explained she had moved the lights down three times and had a contractor build shields in front of the lights. Ms. Gajewski mentioned that the light the neighbors complain about the most, was taken down and replaced by an electrician that as Ms. Gajewski stated buys this type of light multiple times a week, to put on people’s houses.

The Board and Ms. Gajewski continued to discuss. D. Doherty asked Ms. Gajewski how long the Emmerichs had been living next door, Ms. Gajewski did not know. D. Doherty asked if there was “bad blood” between her and the Emmerichs, Ms. Gajewski asked what this question had to do with the lights, D. Doherty stated that this is what he is trying to find out and asked to hear the whole story. Ms. Gajewski mentioned that the Emmerichs had cut down their trees. D. Doherty asked Ms. Gajewski to clarify when the issues with the Emmerichs began. Ms. Gajewski stated the moment the Emmerichs moved in they began calling the police, D. Doherty asked when that was, Ms. Gajewski stated October of 2015 is when the police first came to her house, D. Doherty asked Ms. Gajewski if that is when she believed the Emmerichs moved in, Ms. Gajewski responded yes, but didn’t know what month.

D. Doherty again asked if there is “bad blood” between the neighbors, Ms. Gajewski stated that she did not need to be at the meeting and that the Building Inspector already made a ruling, and added that she was only at the hearing to hear what was happening. Ms. Gajewski stated that this hearing is about the Building Inspector who had already made a ruling that she was not in violation, and the meeting is not about her.

B. Croft asked Ms. Gajewski when someone had climbed on her roof, and asked if it was since the petitioners had bought the home adjacent, Ms. Gajewski replied yes.

M. Kornitsky explained that as Chairman, he is to make sure there is a record, and for the meeting to follow procedure. M. Kornitsky continued to explain that the review and appeal of the Building Inspectors determination, is known as a “de novo” appeal and explained that this means the Board hears evidence from both sides.

Ms. Gajewski stated that when the first lighting inspector was hired, the only violation that was mentioned was that the lights casted a shadow in the corner of the petitioner’s backyard. Ms. Gajewski stated that she moved the lights down and built stuff in front of the lights, and added that the petitioners claim the lights cast shadows on their home, which she did not believe.

M. Kornitsky explained that the Board has the original experts report, which Ms. Gajewski stated was “all that she was told”. M. Kornitsky asked Ms. Gajewski if she had a copy of the report by Mr. Lemmons from March 2016, Ms. Gajewski stated that she did. M. Kornitsky then read the

conclusion from that report, which said the “exterior illumination at the neighbor’s property, south of 45 Phillips Beach Ave does not meet any of the Town of Swampscott Bylaws for exterior lighting as follows”, M. Kornitsky then explained that the conclusion had four specific points. M. Kornitsky mentioned that the Board had seen photos and had heard from both parties.

B. Croft asked if he had heard a previous statement correctly, that the petitioner had offered to pay for lighting adjustments on the neighbors lighting, Attorney Drucas replied that they did. B. Croft asked Ms. Gajewski if there was a way to accomplish her concerns with the lighting and also reduce the issues that the neighbors have, and the petitioner would pay for it, would she agree to this? Ms. Gajewski replied that she does not want anything from the neighbor.

M. Kornitsky asked if Ms. Gajewski wants to light her yard, which she replied yes. M. Kornitsky then explained a possible outcome to this hearing where the Board overturns the Building Inspectors ruling, and Ms. Gajewski would have to take her lights down, M. Kornitsky hypothesized that Ms. Gajewski would have to add electrical to her garage, then explained that he believes B. Croft was trying to resolve the situation by agreement. M. Kornitsky explained that if Ms. Gajewski does not agree with the offer then the Board has the jurisdiction to hear the appeal and to rule on it.

M. Kornitsky then asked Attorney Drucas for his response.

Attorney Drucas stated that he would not get into some of the arguments that were brought up because they were not relevant to the hearing. Attorney Drucas explained that the Building Inspector had cited them (11 Tip Top Road) several times, and this went to District Court in Lynn for proposed \$300-a-day fines. Attorney Drucas mentioned that there had been a previous (Attorney Drucas explained that at the time Attorney Dimento was representing Mr. Gateman) agreement that the light fixtures would be remedied. Attorney Drucas stated that based on this agreement the citation would be dismissed. Attorney Drucas explained that it took “almost” 4-months for something to happen, B. Croft asked if something was done, Attorney Drucas responded yes, and mentioned that the second invoice provided to the Board has this information. Attorney Drucas reiterated that the Building Inspector had focused only on one of the lights, but Attorney Drucas explained that his client’s concerns are about the three lights in the back of the house, and reiterated that they have asked the Building Inspector multiple times to view the lights from inside his client’s house. Attorney Drucas explained that despite these requests, the Building Inspector has never observed from inside the home. M. Kornitsky asked to see the invoice, Attorney Drucas handed them to the Board.

R. Landen asked Mr. Perzazza if the property at 53 Phillips Beach Ave is affected differently than the Emmerichs property, and then asked if there was anyone from 53 Phillips Beach Ave present.

A lady in the audience spoke up and stated that the issue at their home is even worse. R. Landen asked that the abutters speak up, and explained that it is helpful to the Board. Glen Ralphs and Sam Maxstead of 53 Phillips Beach Ave explained that the lights did change 2 ½ years ago, but that they changed from incandescent lights (which Mr. Ralphs explained “were not nearly as bright” in regards to the changing of the lights) to LED lights. Mr. Ralphs explained that it is brighter now than when they moved into the home 5 years ago. B. Croft asked for clarification, Mr. Ralphs explained that it is “definitely brighter with the shield”. Ms. Gajewski stated that the lights that faced the abutters homes were taken down, to which Ms. Maxstead responded that the lights shine directly into her bedrooms. Ms. Gajewski responded that the abutters should put up shades.

M. Kornitsky explained that one person at a time will speak, and that he will give Ms. Gajewski time to respond.

Ms. Maxstead responded to Ms. Gajewski’s claim to “put up shades” and stated that she has blackout shades across the entire windows of the upper floor of her home, (she explained her son’s bedroom, spare guest bedroom, and on-suite bathroom) and that that these rooms are fully illuminated at night. Attorney Drucas mentioned that the abutters (53 Phillips Beach Ave) have spoken to the Building Inspector as well, and Ms. Maxstead added “at least three times” and that she had filed two complaints.

M. Kornitsky then asked for Ms. Gajewski’s response. Ms. Gajewski stated that she had taken down the lights that Ms. Maxstead was referring too, and replaced it with a light that does not face their (53 Phillips Beach Ave) house anymore, and explained that it faces the back of her home towards her deck.

Ms. Gajewski asked if there was a light violation on brightness, and then stated that the Building Inspector said that if the light is not casting a shadow then it is not a violation. Ms. Gajewski continued to state “just because they can see the lights, there is no violation”. Ms. Gajewski stated that this issue seems to be the main concern that she is hearing, and explained that her home is at the top of a hill, above her neighbors, and asked the Board how she could have lights that no would see? M. Kornitsky explained to Ms. Gajewski what the ZBA is trying to decide is if there is a violation the Bylaw 3.4.2.0, to see if the Board disagrees with the determination of the Building Inspector. M. Kornitsky then asked if there was anyone else that wanted to be heard on the petition. Ms. Maxstead mentioned that in regards to the Building Inspectors comments that any lights that cast shadows are inappropriate, Ms. Maxstead stated that the entire back of her, “you could do finger puppets from those lights, including our shed”.

B. Croft asked the residents of 53 Phillips Beach Ave if the Building Inspector had observed the lights from their home, Ms. Maxstead stated that the Building Inspector had not.

Ms. Gajewski mentioned that she would like the Board members to visit her home and see that her backyard is black at night. Ms. Gajewski responded to Ms. Maxstead's claim (that the lights illuminate her backyard) by stating that the lights do not even light her backyard, and reiterated that her backyard is black.

M. Kornitsky explained that there is a standard described in the Bylaw, that the Board needs to interpret and apply, and began to close the public meeting, but no vote was made. B. Croft asked for the Board to discuss first. M. Kornitsky asked if there was any discussion amongst the Board regarding the petition.

Ms. Gajewski asked if the Building Inspector was supposed to be at the hearing, M. Kornitsky explained that he had received an email from the Building Inspector and was told that if there were questions then the Board would be able to contact him if needed. M. Kornitsky explained that the Board has the information in front of them, and then M. Kornitsky mentioned again that he is ready to close the public hearing and vote. M. Kornitsky asked if the other Board members were ready as well, D. Doherty responded yes. M. Kornitsky then constituted the Board as the five regular members (M. Kornitsky, D. Doherty, A. Rose, B. Croft, A. Paprocki).

A. Rose asked if the Board could have a discussion before voting. A. Rose stated that the Building Inspector had issued his determination, and that he (A. Rose) does not think it is the Board's jurisdiction to go against the Building Inspector, and explained that the Board is not experts in this field. A. Rose mentioned that this is similar to a hypothetical situation in which the Building Inspector made a determination that a piece of steel was structurally sound, and then the Board tells the Building Inspector that he is wrong. A. Rose mentioned that because the Building Inspector said the lights are in compliance, then the abutters and neighbors would have to fight the case out procedurally. B. Croft mentioned that he believes this to be a de novo appeal, and mentioned that the Board has heard evidence. A. Rose responded that the Board is not experts on lighting, to which M. Kornitsky explained the Board has the reports, A. Rose then reiterated that if the Building Inspector believes the lights are in compliance then it is not for the Board to tell the Building Inspector they are wrong, and make the property owners do something different. M. Kornitsky mentioned that he respectfully disagreed. A. Rose stated that it is for the Building Inspector to determine compliance, M. Kornitsky added that the Building Inspector is supposed to interpret the Bylaw. M. Kornitsky explained that in the case of an appeal it is for the Board to determine if the Building Inspector determined correctly. M. Kornitsky continued that when he reads the specific section of Bylaw regarding lights, he does not believe 11 Tip Top Road is in compliance. M. Kornitsky explained that this case brings up difficult situation, but in this case, he disagrees with the Building Inspector. A. Rose stated that he does not believe the Board is expert enough on this to decide, M. Kornitsky explained that the Board has the expert reports, and explained that the land owner of 11 Tip Top Road could have provided evidence as well.

Ms. Gajewski responded that she never received a letter, to which M. Kornitsky responded that the public hearing is closed.

B. Croft explained that he is leaning towards M. Kornitsky's view, but explained that there will always be some sort of visibility and that the Bylaw does not give an appropriate amount of specificity the Board would like, and mentioned specifically, where in the Bylaw it says "should be low, so as to reduce". B. Croft explained that this is "grey" language, but mentioned that the Board did hear persuasive evidence, and mentioned the experts report, the account of Attorney Drucas stating that the Building Inspector may not have seen the offending lights, the proximity of the lights to the house, and the residents of 53 Phillips Beach Ave stating that the lights shine into their home and they also believe it's in violation. A. Rose again reiterated that he does not believe it to be the Boards decision. A. Rose and M. Kornitsky discuss the next steps regarding a possible procedural fight regarding this situation. A. Rose stated that the procedural fight should happen on the enforcement of the building code side, as opposed to the Board making "the extra determination that it is not in compliance, because this is what we see".

B. Croft stated that if the Board is to say the lights are not in compliance, then the next step would be for the lights to be made in compliance, and the process would be restarted. A. Rose stated that the Building Inspector already said that the lights are in compliance. B. Croft mentioned that hopefully the Building Inspector would go out to the site and look at the lights. A. Rose mentioned that he is not disagreeing with B. Croft, but mentioned that he does not think it is the Boards fight.

M. Kornitsky asked to hear D. Doherty's thoughts on the petition, D. Doherty stated that he believes it is "obvious" it violates 3.4.2.0, and that the Board has no choice but to overturn the Building Inspector. D. Doherty explained that in 5.2.2.3 that it mentions the Board has jurisdiction to overturn the Building Inspector. D. Doherty explained that it is obvious that the lights do not comply and that he does not need to hear from the Building Inspector. D. Doherty reiterated an earlier statement from M. Kornitsky that it is rare the Board overturns the Building Inspector but when the facts present themselves, D. Doherty stated it is the Boards duty to do it.

A. Paprocki mentioned that in most cases of Building Inspector appeals, the Board does not receive concrete evidence and that it is usually heavily opinionated, but that in this case the Board does have evidence, and mentioned that it is the fact the Board can see the light source. D. Doherty added that the photographs convinced him, and he wouldn't have needed an expert, D. Doherty specifically pointed to the photograph of the lights coming into the master bedroom, and mentioned that it should not be happening in your bedroom, B. Croft added "or your kids room".

M. Kornitsky mentioned he was unsure if the public hearing was closed so he made a motion again.

MOTION : by M. Kornitsky to close the public hearing, seconded by B. Croft, unanimously approved, the public hearing was closed.

MOTION : by D. Doherty to approve the Petition of David Emmerich pursuant to Chapter 40A section 15, appealing the decision of the Building Inspector to the effect that the exterior lights on the property at 11 Tip Top Road are no longer in violation of the Bylaw 3.4.2.0, seconded by B. Croft, approved, A. Rose abstained from the vote, the decision was approved 4-0-1.

Carolyn Parker approached the Board and asked if they would go out of order and hear her petition as she had traveled far to attend the meeting, M. Kornitsky agreed and called forth Petition 17-12.

PETITION 17-12

525 PARADISE ROAD

This is a petition by Carolyn Parker, seeing to modify an existing special permit on freestanding sign, remove three LED price panels, install one LED price panel, and one blank panel. Ms. Parker is also seeking a special permit (sign) to install “Synergy” modules.

Ms. Parker stated she is representing Global, who owns the Mobil Gas Station, and that Mobil has come out with a new type of gas, called “synergy”. Ms. Parker explained that the gas station price signs are changing from three prices to just one. Ms. Parker stated that they are proposing to remove three LED price signs and install one sign, and have one blank panel. Ms. Parker explained that they are reducing the square-footage of the sign, and reducing the glare.

Ms. Parker mentioned that the Building Inspector was unsure about the other portion of the petition. Ms. Parker went on to explain that where the fuel dispensers are, the company wants to install what they call a “wave”, which is a metal fixture that says the word “synergy”. The business also wishes to install a “koala”, that has regulatory information on it, such as “no smoking” and other safety information.

M. Kornitsky asked for more clarification on what the “koalas” are, Ms. Parker showed M. Kornitsky the proposed designs. M. Kornitsky asked if it was for advertisement, Ms. Parker responded no. Ms. Parker stated “wedges” will be added, which tell people the proper lane to go in, and will be placed on the poles. Ms. Parker explained there is an existing special permit on all the signs on the property and that this is why she is front of the Board requesting a change.

M. Kornitsky asked for more questions, there was none.

M. Kornitsky constituted the Board as, himself, A. Paprocki, E. Stuart, H. Roman, R. Landen,

MOTION : by M. Kornitsky to close the public hearing, A. Paprocki seconded, the Board unanimously voted to close the public hearing.

MOTION : by E. Stuart to approve petition 17-12 by Carolyn Parker to modify an existing special permit on a free standing sign, to remove the LED light panels, to install one LED light panel and one white panel, and a special permit to install “synergy” modules, seconded by A. Paprocki, the Board voted unanimously in favor.

PETITION 17-14

14 BAY VIEW DRIVE

M. Kornitsky called forth Petition 17-14, an application by Kenneth B. Shutzer o/b/o Steven P. Banks, seeking a request for extension (12-months) for the rebuilding of a single-family home, previously destroyed by fire.

Attorney Kenneth Shutzer introduced himself to the Board and explained that he is representing the Mr. Banks. Attorney Shutzer explained that the Board is familiar with the property, and the processes it has undergone. Attorney Shutzer explained that his client had withdrawn his previous petition, and has bought a new home elsewhere, and that his client needs to decide what to do with the land. Attorney Shutzer explained that Bylaw 2.2.7.5 allows for one year to rebuild a home and do to different things, it has already taken that long. Attorney Shutzer explained that the Bylaw allows for the petitioner to go before the Board prior to the allowance running out and ask for an extension. Attorney Shutzer stated that given the circumstances, granting an extension would be reasonable. Attorney Shutzer mentioned briefly the previous petition, then asked the Board to grant the one-year extension. Attorney Shutzer stated the extension will be built on spec by Mr. Banks (property’s owner), or sold to an individual who will build the house. Attorney Shutzer stated that possibly the owner would pull a building permit that conforms with the building requirements, and possibly go back before the Board. Attorney Shutzer then again asked for the Board to grant the extension.

M. Kornitsky asked if there was anyone present who wished to be heard, there was none. M. Kornitsky mentioned that he is inclined to grant the relief (extension).

An audience member asked if the extension is the same thing as a special permit. M. Kornitsky explained that the Board would be granting a 12-month extension to reconstruct the property, and then clarified further what this means. Attorney Shutzer tried to clarify as well what the specific terminology is regarding the decision.

M. Kornitsky read the language from Bylaw 2.2.7.5 aloud, and explained that he does not see this as a special permit, but as an extension of the time for reconstruction. B. Croft clarified that any reconstruction would need to have a site-plan special permit process. Attorney Shutzer responded that technically it might not. Attorney Shutzer explained that if the home was over three thousand square feet, then it would go in front of the Planning Board. Attorney Shutzer explained that there has never been an application for this property over three thousand square feet. Attorney Shutzer explained that the process would be like the abutter (who's house also burnt down) and there would be no site-plan special permit, because the house is under three thousand square feet. R. Landen asked for clarification on the statement, Attorney Shutzer explained that the Special Permit Granting Authority (Planning Board) would only apply if the house was over three thousand square feet. The Board and Attorney Shutzer then briefly discussed what the property owner could do.

B. Croft and M. Kornitsky explained that the Board is not deciding this, and M. Kornitsky explained that all the Board is doing is extending the time for the property owner to apply under 2.2.7.5 which will apply in its entirety if it was extended timely. M. Kornitsky then clarified that the Board is just extending the time for the property owner to file for a building permit or relief, under 2.2.7.5.

Judith Golditch, 10 Bay View Drive, explained that she had spoken with the Town Building Inspector, and that the Building Inspector stated that the property owner could just ask for permission to extend the permit to build if the same footprint as the one building before, which was not three thousand square feet.

M. Kornitsky clarified that this is not what Mr. Shutzer is saying and then clarified that whatever Mr. Banks was able to do in the first year, he will have another 12 months to do it. Ms. Golditch stated that she wanted clarification, because she thought it sounded like the property owner wouldn't have to come back before the Board, if it was three thousand square feet. M. Kornitsky explained that if the home owner could have built something without relief in the first 12 months, he can build it in the second. M. Kornitsky explained that they may or may not go back in front of the Board and that it is up to the Bylaw. M. Kornitsky explained the Board is not giving anything besides the timeline to extend for filing.

Christine Allison, 18 Bay View Drive mentioned that it is her understanding, that the owners of 14 Bay View Drive could rebuild in the same footprint, M. Kornitsky explained what they would be granting no other relief besides preserving their right after a fire for another 12 months. M. Kornitsky explained their rights will be preserved for another 12 months.

Barry Allison, 18 Bay View Drive asked if there is an opportunity second extension, M. Kornitsky explained that the Bylaw says that the Board is able to extend for up to an additional 12 months, and that this is all that he sees the Board has jurisdiction for.

A. Paprocki mentioned the Health Department's comments, M. Kornitsky mentioned he was looking to make that part of the conditions.

M. Kornitsky constituted the Board as himself, R. Landen, H. Roman, E. Stuart, D. Doherty.

MOTION : by R. Landen to approve Petition 17-14, application by Steven Banks, seeking to extend rebuilding of the single-family home under section 2.2.7.5 of zoning Bylaw, extend the time period to rebuild the home for an additional 12-months, which would put it at July 3rd, 2018, conditions of this approval that at least one time a month there is a vegetation reduction (i.e. cut the grass), and make sure the litter is removed from the property for the time that it sits as a vacant lot, and for clarification that this only extends the time period by which there could be reconstruction under Bylaw 2.2.7.5, does not affect any of the other conditions, seconded by H. Roman, unanimously approved.

PETITION 17-13

331 PARADISE ROAD

This is an application by Viewpoint Sign and Awning seeking a special permit (signs), to install a 48" h x 187 ¾" w (62.5 sf) sign on the northeast elevation of the building. The sign is to include face-lit channel letters reading "Whole Foods Market".

Jefferey Kwass was present and explained that he is with the petitioner, Viewpoint Signs and Awnings. Mr. Kwass explained that he would like to add a second sign on the side of the building, and added that dimensions are substantially below the square-footage allowance, and that the sign is half of what is allowed. Mr. Kwass explained the sign location is important for cars driving on that side of the building, and mentioned there is room there for the sign as well. Mr. Kwass explained that this request would be allowed by code, but the site is bound by special permit, so this is why he is before the Board, M. Kornitsky agreed.

M. Kornitsky asked if there were any public comments, there was none.

M. Kornitsky constituted the Board as himself, A. Paprocki, R. Landen, E. Stuart, and H. Roman.

MOTION : by M. Kornitsky to close the public hearing, seconded by E. Stuart, unanimously approved, public hearing was closed.

MOTION : by A. Paprocki to approve petition 17-13, permitting a second sign as outlined in the petition, of 62.5 sf on the side of the building under Bylaw section 3.2.4.2a, and the sign as depicted and the materials depicted as part of the petition, seconded by E. Stuart, unanimously approved.

PETITION 17-10

450 PARADISE ROAD

This is a petition by CC Lot B-5 LP for a use special permit (2.2.3.0)(C)(7) to operate a medical out-patient clinic in the space formerly occupied by Jos. A. Bank.

M. Kornitsky noted that A. Rose had recused himself from the Board for the hearing, as A. Rose is representing the petitioner.

A. Rose stated he is present with Zaka Shafiq, the owner of the proposed clinic and added that Mr. Shafiq has another facility in Beverly as well. A. Rose explained to the Board that walk-in “pop-up” clinics are becoming more popular, and are in many shopping centers. A. Rose cited a Wall Street Journal article talking about walk-in clinics. A. Rose explained that he had spoken with the Building Inspector who mentioned that they would have to go in front of the Board because he thought there would be more than 10 employees. A. Rose stated that the clinic has less than 10 employees, and under 10 employees the business does not need a special permit, but A. Rose explained that the Building Inspector decided that it was a medical clinic in its institutional use of the Zoning Bylaw and that it needed a special permit. A. Rose explained that he and the Building Inspector discussed this briefly, and ultimately stated that he and Mr. Shafiq, rather than argue the point, would come before the Board.

Mr. Shafiq explained the hours are 8am-8pm on weekdays and 8am-6pm on weekends, which A. Rose stated is consistent with “normal hours these days”, and then asked the Board if they had any questions.

M. Kornitsky asked how many staff members there will be, Mr. Shafiq responded there would never be more than 5, usually four. M. Kornitsky asked how many exam rooms there will be, Mr. Shafiq explained there are plans for 7, but awaiting certain reviews. M. Kornitsky asked if there would be a medical doctor and nurse practitioners there? Mr. Shafiq responded that they are allowed to have both right now, and about 75% medical doctors, and sometimes nurse practitioners. A. Rose added that it is a walk-in clinic and not a private doctors office.

M. Kornitsky asked if generally people without health insurance, Mr. Shafiq explained that 90% plus of walk-ins have insurance, and explained the idea of the clinic is to use it as a substitute for the emergency room, and added their prices are 1/10th of a ER co-pay. A. Rose then gave an example story of how people use the walk-in clinics.

M. Kornitsky asked the Board for questions, there was none. M. Kornitsky mentioned that it looked like Attorney Kenneth Shutzer was present and representing someone in regards to the petition. M. Kornitsky asked Attorney Shutzer if he had any comments.

Attorney Shutzer began by explaining he believed there was a procedural issue, and that he had received a call from Doctor Baker, of the Family Doctor Practice at 250 Paradise Road, and that Dr. Baker had called to ask Attorney Shutzer what this petition is all about. Attorney Shutzer explained that he went to Town Hall and pulled the application, because as he stated the advertisement in the newspaper “lacked specifics require by this Board”. Attorney Shutzer explained that he spoke with P. Kane and asked for some more information regarding the petition. Attorney Shutzer explained that P. Kane explained to him only a little more information, and added that he received a call from Mr. Rose explaining the petition. Attorney Shutzer state that there is a notice requirement and that this application lacked it, due to it lacking the “stuff” that is required. Attorney Shutzer went through the information that he believed the application lacked. Attorney Shutzer added that Dr. Barker is a former member of the Board of Health and wants to make sure he knows what is going in is appropriate.

Attorney Shutzer continued that there needs to be an application that explains the significance of the request and related information. M. Kornitsky responded that the application is asking for a special permit and explained the application disclosed it was a medical outpatient clinic. M. Kornitsky added that he did not think the application needed to be vetted so much for this specific use. Attorney Shutzer mentioned that he did not think there was anywhere in the Bylaw that distinguishes the application what it needs to and does not need to incorporate. Attorney Shutzer stated that “he had never seen the standard so low”. Attorney Shutzer reiterated that the application and advertisement lacked important information.

Attorney Shutzer mentioned some things to the Board that he believes people want to know about the application. Attorney Shutzer mentioned that the application did not identify the applicant, but only the buildings landlord. Attorney Shutzer mentioned that this is not the standard by which the Board reviews applications. A. Rose stated that he categorically disapproved, and mentioned that he did not need to have a tenant to file

for a special permit, and explained it is the same type of process he has used in the past. A. Rose reiterated that he is asking for a use, and theoretically he is entitled to go out and find a user for that use, and explained there is nothing in the Bylaw that says that he has to know the user. A. Rose and Attorney Shutzer then briefly discussed the Bylaws and changes. A. Rose stated that the use permit is now for the property, not the user, M. Kornitsky agreed. A. Rose mentioned past applications that he has gone before the Board with, and that he didn't name the tenant in them. M. Kornitsky asked if Attorney Shutzer had anything to add. Attorney Shutzer responded by explaining his understanding of the Bylaw and stating that Mr. Rose is wrong in stating it is "the old Bylaw". Attorney Shutzer added that he and the abutters need to know who and what is going into the location, and reiterated his concerns with the lack of information provided and advertised.

M. Kornitsky asked if there was anyone else present with concern about the use.

Doctor Peter Barker, Medical Director of the Family Doctors in Swampscott, and lives at 44 Manton Road.

Dr. Barker stated that this proposed use would compete with his practice (The Family Doctors), but that is not why he is in front of the Board, and explained that he believes there should be options in health care. Dr. Barker explained to the Board that a reason for his concern comes partly from being a consumer of health care, a former member of the Board of Health, and his medical businesses experience for almost the past 40-years. Dr. Barker again reiterated that he is not in front of the Board due to competition, and reiterated the need for options. Dr. Barker explained that his concerns included, who the clinic is, and added that he found out it is AFC Doctors Express, and stated that he had some questions that he believes should be answered and discussed after viewing their website. Dr. Barker stated that if these questions and concerns could be answered then he would be open to the clinic opening.

Dr. Barker produced a list of questions and concerns that he had, and began with the second question on his list. Dr. Barker asked if this clinic would be like a drive-through, and mentioned that with his experience some patients will leave his facility and go to the hospital via an ambulance, and mentioned that it is important to know the clinics emergency response. M. Kornitsky asked Dr. Barker if the Family Doctors provided this information when they applied for their permit, Dr. Barker explained that he did not apply for a use. M. Kornitsky explained that they expanded the use, Dr. Barker clarified it was a construction expansion, M. Kornitsky stated to them that this is expanding the use.

Dr. Barker explained that at times the Town's services will or might be requested to attend to the facility, and that some people could be quite sick, Dr. Barker mentioned that some patients will need to be stabilized and transferred, and when they are released, will need follow-ups.

R. Landen asked Dr. Barker his concern, and if the applicant was moving into a medical professional building, would he still be questioning them, Dr. Barker replied that this is urgent care and not a private clinic. A. Rose asked for a copy of Dr. Barkers questions.

Dr. Barker mentioned that he is giving some recommendations and airing concerns and that the Board can either take them or not.

M. Kornitsky asked about the licenses this type of facility needs, Dr. Barker mentioned he believed they operate as a private facility. Dr. Barker explained that his questions are related to concerns about impacts on the Town and stated that there should be considerations of the systems in place to take care of patients who come to their facility and need to be transferred.

R. Landen mentioned that he does not see this as being a Zoning issue, and asked if others agreed. M. Kornitsky explained that the Boards criteria, looking specifically at the special permit criteria in 5.3.0.0, and the Board needs to consider the "social, economic, or community needs which are served by the proposal". M. Kornitsky then suggested that this use will be another option for people to seek health care, and Dr. Barkers concern that this is a negative on Town resources.

Dr. Barker mentioned, that as a resident he has some concerns on how the clinic operates, after visiting their website, and reiterated that he is just trying to learn more information.

Dr. Barker moved to his first question on his list, and mentioned that the website advertised the clinic as a family care-center and then read what the clinic does, as advertised on their website. Dr. Barker explained that in the "modern-era" doctors are expected to follow-up manage patients. Dr. Barker asked if the clinic will see consumers afterhours? M. Kornitsky stated that it is up to the consumer to decide if they will use the clinic, R. Landen reiterated that he does not see these as Zoning concerns.

Dr. Barker mentioned that they advertise that they offer primary care, but he does not think that they are set up for that. Dr. Barker mentioned that personally he has questions about what is said on the website, such as they accept most insurances, but pointed out that it looks like they don't accept MassHealth.

B. Croft looking at the question sheet, asked where it talks about primary care in question 1, Dr. Barker responded that the website mentions in several places that they provide preventive care. Dr. Barker then read some of the things the website said they can treat. B. Croft stated that if someone was to seek emergency care for one of these issues, they could go to the clinic seven days a week. Dr. Barker explained that these are not

urgent care conditions, that these are chronic conditions, and explained what they entail. Dr. Barker mentioned that these questions are for the Board, and that they are his thoughts on the matter.

Attorney Shutzer explained that one of the “beauties” in providing the advertisement is it allows people the ability decide if they should come to the meeting, that they would want to see who the business is. Attorney Shutzer again reiterated his concern and dismay that the petition and advertisement lacked important information. B. Croft asked Attorney Shutzer if he agreed that the Board is not in the position to make a decision on the doctors and the practice, Attorney Shutzer mentioned that he agreed “conceptually”, but that he disagrees because he believes the Board has some responsibility to know who is going into locations. Attorney Shutzer reiterated that the Board does not know anything about the applicant. M. Kornitsky stated that the applicant is in front of the Board and that the Board can ask him questions. Attorney Shutzer stated that Dr. Barker is in front of the Board because he understands the difficulty the Board has in making these decisions. R. Landen asked if there was a name (of the business) in the advertisement, would he (Attorney Shutzer & Dr. Barker) be at the hearing? Attorney Shutzer responded that he would be there based on the information provided. R. Landen mentioned that they found out the name, Attorney Shutzer stated that Dr. Barker wanted to know and did the research, and then reiterated his concern about lack of information. R. Landen for clarification, asked if Attorney Shutzer is objecting the use or the process, Attorney Shutzer replied the process, and briefly explained why. R. Landen asked what basis the Board has in vetting the applicant on how they are going to conduct their business. Attorney Shutzer responded that he had seen in the past more vetting done by Zoning Boards. M. Kornitsky explained that when he sees a use permit, he is concerned with parking, the effects on the neighborhoods, and specific zoning language in the Bylaw. M. Kornitsky stated that the regulatory concerns could possibly be for another regulatory Board. M. Kornitsky, R. Landen, and Attorney Shutzer briefly discussed his concerns, M. Kornitsky mentioned that he disagreed with Attorney Shutzer. R. Landen stated that Attorney Shutzer is bringing up two different issues, the identification piece, and furthered it by stating that now that the tenant is identified, the tenant must be vetted, Attorney Shutzer responded to the Board that there was no information about the applicant in the application. M. Kornitsky asked in any other people are preset, Attorney Shutzer responded by asking how any others would have known to show up, M. Kornitsky mentioned that medical clinic was mentioned in the application. Attorney Shutzer mentioned a hypothetical situation about wanting to know if the doctors are licensed. Mr. Shafiq responded that his application had been approved by the licensing Board already, A. Rose added that this industry is highly regulated, and explained the process Mr. Shafiq will have to go through.

Mr. Shafiq explained to the Board, that the Department of Public Health had already approved their application. Mr. Shafiq then answered some of the questions and concerns that Dr. Barker and Attorney Shutzer raised. Mr. Shafiq mentioned AFC Doctors Express is the third largest urgent care firm in the country, and there are 21 centers in Massachusetts, and explained some in close proximity, Saugus, Malden, and Beverly (which Mr. Shafiq mentioned is his). Mr. Shafiq then explained a little background and history on the clinics. Mr. Shafiq mentioned that the Department of Public Health has approved his clinic and that they regulate the clinic, and check their plans. Mr. Shafiq added that this is not a unique use and that they are not an “unknown” entity, and continued to explain why the clinic should receive the special permit.

A. Rose then reiterated that “four, five years ago” the bylaw was changed and added that he is seeking a specific use on the property, and that he did not have to state who the tenant was. A. Rose continued to explain that he believes his tenant would be offering a different use (emergency care), which A. Rose stated Family Doctors had decreased. A. Rose then reiterated that his application is complete under the Zoning Bylaw and that he is just seeking a use.

M. Kornitsky asked Dr. Baker if he wished to respond, Dr. Barker stated that he offers walk in urgent care service the whole time the clinic is open.

Attorney Shutzer explained that this might not have happened if there had been appropriate information put on the application, which he stated was the procedural issue he is raising. A. Rose explained that he had called Attorney Shutzer after these questions were originally raised, and added that the tenant should not have mattered.

M. Kornitsky motioned to close the public hearing, D. Doherty seconded, Board unanimously approved, public hearing was closed.

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

MOTION : by M. Kornitsky to approve petition 17-10, for a use special permit for the applicant, for the use as an outpatient medical clinic, making the specific finding(s) that the benefit to the Town and filling the empty space and providing the services to be offered, taking into account characteristics of the site in a shopping center and the apparent need based upon the use of these and location of these clinics throughout the state, country, and even already existing in Town a competitive facility. The size of the facility and in terms of the number of people working there not adversely affect traffic, parking, neighborhood character and social structure, utilities or any impact to the natural environment. The potential physical impact for employment of people within the facility, and the ability for people to be serviced at this facility outweigh any adverse effects that have been described and concerns that have been outlined by Doctor Barker and Attorney Shutzer, Seconded by B. Croft, unanimously approved by the Board.

This is a petition by Michael Ruiz seeking a special permit (nonconforming use/structure) for the demolition of an existing one-story garage and foundation, and building a two-and-a-half story addition. The front setback to decrease 3-feet, and side setback to change 4-feet, with the lot coverage increasing 312 feet.

Mr. Ruiz and his wife Alyssa were present. Mr. Ruiz explained that the application is for a special permit and the major issue is the density, or amount of open space compared to the amount of developed space. Mr. Ruiz mentioned that A1 Zoning districts require large lots, and that this is characteristic of some of the larger properties in the neighborhood, but also mentioned that some of the homes and lots nearby are similar in size adding that most homes in the neighborhood are large houses with large plots of land. Mr. Ruiz mentioned that their home is a little different, and that a good reference on what the site and house currently looks like, is a response that he had made to comments provided to him by Director of Community Development, Peter Kane. Mr. Ruiz explained that he would like to address specifically comments made regarding the site-plan. Mr. Ruiz stated to the Board that he is aware of over-development issues on lots, stating adding too much hardscape (Mr. Ruiz mentioned pavement), it takes away the open space.

Mr. Ruiz explained that he is trying to revamp the site, and that the new site-plan only adds 213 square feet of hardscape, adding that this is a small impact to the open space. M. Kornitsky mentioned that this proposal will be a 5% increase of lot coverage, from 47% to 53%. Mr. Ruiz agreed and explained that he is trying to mitigate the hardscapes impact on the open space. Mr. Ruiz mentioned that the height of the current building was left off the application, but that it is 24-feet, Mr. Ruiz stated that the proposed addition will bring the height to 28.8 feet, which is under the 35 feet height allowed in A1 district.

Mr. Ruiz explained they are proposing a change in the side setback by four feet, and three feet change in the front, but that both changes are still under the max amount allowed.

Mr. Ruiz then explained that he and his wife moved into the home three years ago, and that the home was in disrepair, with issues including; leaks, mold, windows, and roof problems. Mr. Ruiz added that he and his wife fixed the home up and that they wish to keep improving the home, adding value to it as well as the neighborhood.

Mr. Ruiz stated that he believed from looking at the architectural drawings for the proposed addition, that it will fit in with the neighborhood. Mr. Ruiz mentioned that P. Kane wrote to him a concern over the “awkward” shape of the peaked roof and the proposed addition, Mr. Ruiz stated that there are other homes near his that are similar. Mr. Ruiz also mentioned P. Kanes concern over the inconsistent material proposed in the application (cedar shakes next to stone), Mr. Ruiz mentioned that this is similar to other homes in the neighborhood, adding that the home across the street had a brick façade and cedar shakes. Mr. Ruiz also mentioned a comment regarding the use of double-hung windows on the addition (the rest of the home has case windows) Mr. Ruiz explained that this is an architectural feature, and that he and his wife thought the double-hung looked better.

B. Croft asked if the existing home will stay white, Mr. Ruiz responded it would, B. Croft asked about the upper part of the addition, Mr. Ruiz responded it would be white as well, and that the stone will be a grey mixture, described as a “Boston Blend”, with some red and blue, and that they would be looking to change the green shutters. B. Croft asked if the garage door is out-swinging, Mr. Ruiz stated that it has that look, but opens overhead.

M. Kornitsky mentioned that he was unsure if the applicants need a special permit for lot coverage.

Mr. Ruiz explained that in the 1970’s a special permit was pulled for the garage, and now he is looking to build on top of that, and this is why they need a special permit. M. Kornitsky responded that they may need a dimensional special permit for nonconforming building coverage. Mr. Ruiz explained that the front of the home is being “bumped” out because of a front interior staircase is being changed because it is currently not code-compliant, but added this increased distance is still Bylaw compliant. B. Croft stated that the lot coverage is going from 47% to 53%, Mr. Ruiz explained that this large number is due to the small lot.

M. Kornitsky stated that if the petitioners need a dimensional special permit because they have a nonconforming structure on a nonconforming lot, and exceed the lot coverage, this would bring the request to the criteria of section 2.2.7.3B, which leads to a section six analysis for dimensional special permit under 2.3.2.6.5, which states that the resulting structure will not exceed a dimensional requirement by up to 10% of the underlying lot coverage. M. Kornitsky clarified to the applicants that the bylaw permits 33% lot coverage, but that they are over this at 47%, and that the Board needs to decide if they can give relief. M. Kornitsky, to clarify read an example from the Zoning Bylaw and stated that there is an issue with the lot coverage. Mr. Ruiz explained to the Board that he is trying to minimize impacts that come with extending the footprint, adding that the front and side setback will be extending lot coverage, but will also be adding value to the house and neighborhood, and mentioned they are trying to decrease the impact of the hardscape by adding a sidewalk and walkway.

B. Croft and M. Kornitsky briefly discussed the Zoning Bylaw and mentioned that homes in the district are only allowed 30% coverage (the home is currently at 47%) and allowed by special permit to go 10% more (33%). M. Kornitsky mentioned that the applicants would need a variance to

increase anymore, D. Doherty agreed. M. Kornitsky mentioned that there are some significant issues with the Board having the jurisdiction to give the relief the applicants are looking for, adding he did not believe the Bylaw gave the Board the authority to allow the increase. B. Croft explained for a dimensional special permit there is a specific range (amount of coverage) the Board is able to grant, Mr. Ruiz stated he understood. M. Kornitsky mentioned that another route, besides the dimensional special permit, is seeking a variance, but that variances have very strict requirements. Mr. Ruiz asked if they could tear down the garage and build up something, but not adjust the footprint. M. Kornitsky explained that the home is grandfathered in with 47% lot coverage, but that the applicants cannot increase by another 10% (as allowed by special permits for going over 30%). M. Kornitsky recommended the applicant might want to speak with an attorney regarding their request and convincing the Board, or apply for a variance, as well as possibly reworking their design. B. Croft added that the applicants should look to get their lot coverage down 5%. B. Croft and M. Kornitsky then briefly discussed the lot coverage. A. Rose added that the applicant wishes to expand the footprint and the upper story as well, and added that the applicant might just choose one. The Board then discussed if a variance could be given. A. Paprocki clarified the Board could give relief for adding the other story, R. Landen clarified that if he kept the building footprint, then he could get relief. The Board continued to discuss the Bylaw.

A. Rose stated that if the applicant sought a variance, what would the hardship be, M. Kornitsky mentioned he did not see this request getting a variance, D. Doherty added that he agreed with M. Kornitsky. M. Kornitsky mentioned to Mr. Ruiz that variances are rarely granted.

B. Croft asked for clarification on the changes to the footprint and R. Landen asked if the plans were the official architecture plans, Mr. Ruiz replied they were, and then showed the Board the changes on a plan. Mr. Ruiz mentioned that due to the oddly shaped staircase, they wish to bump the entry way out. Mr. Ruiz mentioned that he could rework the design and it would not affect the 47% lot coverage, but still would have to change the footprint of the garage and possibly rework the hardscape, and reiterated the front stairs are “weird”. B. Croft asked if any way to reduce the lot coverage without changing the footprint, A. Paprocki mentioned that they could subtract area from another part, but can still keep it at 47%. The Board and Mr. Ruiz discussed the plans and different possibilities.

M. Kornitsky mentioned that the applicant could go back to the architect and rework design to keep lot coverage to 47%. Mr. Ruiz stated that he understands and was unaware of the lot coverage restrictions.

M. Kornitsky briefly discussed the next meeting dates and decided that the July meeting would be canceled and the next hearing would be August 22nd. M. Kornitsky asked Mr. Ruiz if he would continue to August 22nd. R. Landen asked if there is anything else the Board wants to add for guidance, besides reworking the design, D. Doherty mentioned that percentages should be used instead of square feet.

M. Kornitsky mentioned that no one had shown up to comment on the proposal, Mr. Ruiz responded that H. Roman (alternate Board member) was present, who then responded that she is in favor of the addition, but understands the zoning concerns, she added that she has seen the stairway in question.

M. Kornitsky mentioned that Mr. Ruiz should work with an architect and should come to the next meeting with additional support, and possibly a letter of support signed by neighbors. M. Kornitsky added that he should stay away from requesting a variance, and continued to explain that the Board can push the relief given to the maximum allowed with a special permit, but cannot go over that. R. Landen mentioned that he is curious about the height of the addition, explaining that pictures provided to the Board showed homes that were 1 ½ stories, but that this addition would be around 2 ½ stories, and was curious if there were other home with this height in the neighborhood (R. Landen mentioned that he understood that it is under the allowed amount, but was curious). Mr. Ruiz explained that the homes near his that are taller, A. Rose clarified that a garage are usually smaller than the main home.

H. Roman mentioned that the second floor on the existing home is low, Mr. Ruiz explained this why the addition will be 2 ½ stories, and mentioned that the peak roof is similar to other homes in the area.

M. Kornitsky asked for the applicant to come back with pictures or a catalogue for the stone-facing material being used, and recommended the applicants also use the Planning Department as a resource when working through the plans.

MOTION : by M. Kornitsky to continue to the application, seconded by B. Croft, the Board unanimously approved to continue the application.

M. Kornitsky asked the Assistant Town Planner, Andrew Levin if there are any applications filed for the July meeting, A. Levin replied there was none, M. Kornitsky explained that he would be looking to cancel the July meeting and that the continuance would be to the August meeting

PETITION 17-11

450 PARADISE ROAD

Application by CC LOT B5 L.P. seeking a use special permit to amend permit 16-19 to allow use 2.2.3.0(E)(38), and permit Starbucks drive-thru to be open either after 10 PM or prior to 7 AM (hours of operation).

As the applicant for the petition, A. Rose recused himself from the Board to answer questions.

A. Rose explained that this part of the original permit was left out inadvertently from the comprehensive permit to renovate the Walgreens, and did not know who the new tenants would be, filling the location. A. Rose explained that he has a permit for the drive-thru restaurant, but need an additional special permit (use) for their drive-thru hours, and explained that Starbucks (the tenant) is proposing to operate under the same hours that they operate in Vinnin Square, 4:30 AM to 9 PM. A. Rose mentioned that P. Kane had brought up concern over the neighbors behind the location, A. Rose the showed a map that showed Dunkin Donuts 120-feet from the closest residential neighbor, and for Starbucks they will be 242-feet away, and that the drive-thru window is tucked in between two buildings. A. Rose mentioned that if there was an issue that he would address it, but did not see there being one at that distance.

M. Kornitsky asked what if there was an issue and brought up the possibility of a sunset review, A. Rose mentioned he would not have a problem with one, but that P. Kane had previously mentioned to him that he did not recommend one. A. Rose mentioned that if there are issues that he would clear them up. A. Rose explained that if the store opens at 4:30am but the drive through at a later time, then this runs the risk of customers honking their horns at a closed drive through window.

M. Kornitsky asked about the work that A. Rose had previously done on the Dunkin Donuts drive-thru, regarding a speaker system, A. Rose mentioned that they had put a canopy over it. A. Rose mentioned that he was unsure if he would be able to do the same mitigation because of the way the buildings are. A. Rose explained what he was able to do previously to divert noise, but that they would not be able to box cars in at this location, due to where the transmission box is. M. Kornitsky asked if they had consulted with a professional, A. Rose stated that if a problem is to arise then they will address it, and mentioned some possible mitigation that he possibly could do.

M. Kornitsky mentioned that the sunset review would be for the hours, specifically for the noise. M. Kornitsky asked when the Starbucks would be opening, A. Rose stated explained they will open in the December but that they would have to come back a year after that, M. Kornitsky replied that the review would take place in the Fall and it would only be for the hours of operation for the drive-thru prior to 7 AM.

M. Kornitsky constituted the Board as himself, A. Paprocki, H. Roman, R. Landen, and E. Stuart.

M. Kornitsky moved to close the public hearing, R. Landen seconded, the Board unanimously agreed to close the public hearing.

MOTION: by M. Kornitsky to approve the use special permit, requesting the expanded hours of operation for the drive-thru from 4:30 AM until up to 10 PM with the condition that the applicant come back at the September 2018 meeting to review the sunset on the hours of the drive-thru from 4:30 AM to 7 AM, specifically concerns about noise, seconded by A. Paprocki, unanimously approved.

MOTION : by M. Kornitsky to adjourn the meeting, seconded by R. Landen, unanimously approved, the meeting ended at 10:37 PM.

Andrew Levin
Assistant Town Planner