



TOWN OF SWAMPSCOTT

ZONING BOARD OF APPEALS

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

MEMBERS
MARC KORNITSKY, ESQ., CHAIR
DANIEL DOHERTY, ESQ., VICE CHAIR
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ANTHONY PAPROCKI
ANDREW ROSE

ASSOCIATE MEMBERS
RON LANDEN
HEATHER ROMAN
PAULA PEARCE

JANUARY 28, 2020 MEETING MINUTES

Time: 7:00 p.m. – 9:01 p.m.
Location: Swampscott High School, 200 Essex Street, Rm B129
Members Present: M. Kornitsky, D. Doherty (late), H. Roman, A. Rose (late), P. Pearce, R. Landen, A. Paprocki, B. Croft
Members Absent: none
Others Present: Arthur Black (Petitioner), Bob McCann (Attorney), Walter Jacobs (architect), James Emmanuel (landscape architect), Trevor Parsons (resident), Tom Belheumer (resident), Joan E. Caradonna (petitioner), Mike McKloskey (architect), Leo Malkenson (petitioner), Jimmy Rodriguez (petitioner), David Pollina (resident), Michael Maniscalco (resident), Chris Drucas (attorney), Holly Grace (petitioner), Yara Vergucht (petitioner), Molly O'Connell (planner)

Chairman of the Board, M. Kornitsky called the meeting to order at 7:00 PM.

MOTION: M. Kornitsky to approve the previous meeting minutes from December 2019; seconded by D. Doherty; unanimously approved.

ZONING RELIEF PETITIONS

PETITION 19-31

55 BLANEY STREET

Petition by T. KIERAN NUNAN AND CYNTHIA NUNAN, TRUSTEES C/O KENNETH B. SHUTZER seeking a dimensional special permit, special permit (non-conforming use/structure), special permit for parking relief, and special permit for size of parking spaces to construct a roof deck and dormer addition to the structure and reduce the number and/or size of parking spaces. The Petitioner plans on re-establishing the use as a two (2) family structure, which is allowed in the A-4 district. Property is located at 55 BLANEY STREET (Map 2, Lot 156). Ken Shutzer, attorney, and both petitioners were present.

MOTION: by M. Kornitsky to continue the petition to the February 25, 2020 meeting. Seconded by H. Roman; unanimously approved.

PETITION 12-5

0 ARCHER STREET

Petition by DIGIORGIO & MESSINA CONSTRUCTION CORP. for an amendment to an existing site plan special permit, independent living facility special permit for an alternative access route (Cushing Avenue) and to increase the number of units from 15 to 22. Property is located at ARCHER STREET (Map 7, Lots 213-248 and 250-255).

MOTION: by M. Kornitsky to continue the petition to the February 25, 2020 meeting. Seconded by R. Landen; unanimously approved.

PETITION 19-33

460 HUMPHREY STREET

Petition by CHARLES PATSIOS TRUSTEE for an Appeal of Determination of Inspector of Buildings. Property located at 460 HUMPHREY STREET (Map 19, Lot 102). NOTE: Petitioner has requested to continue the item to the February 25, 2020 meeting.

MOTION: M. Kornitsky to continue to the February 25, 2020 meeting. Seconded by D. Doherty; unanimously approved.

PETITION 19-32

60 TUPELO ROAD

Petition by ARTHUR BLACK C/O ROBERT C. MCCANN, ESQ., seeking modifications to a previously approved dimensional special permit, site plan special permit, and dimensional variance for: alterations to the main dwelling, including but not limited to: removal of second floor balcony and removal of rooftop mechanical equipment; alterations to the exterior and grounds, including but not limited to: reduction in size and lowering the elevation of the tennis court, addition of air conditioning units and a generator partially in the rear yard setback, addition of a pool house in the rear yard setback, and relocation of the pool; and other modifications requested as necessary to implement the proposed plan. The petitioner is also submitting for approval of a final Landscape Plan. Property is located at 60 TUPELO ROAD (Map 26, Lots 118 & 119). Mr. McCann and Mr. Black are present, as well as Walter Jacobs, architect, James Emmanuel, landscape architect, and Scott Patrowicz, engineer. Mr. Jacobs passed the Board a letter from Attorney Shutzer on behalf of Mr. Carpi, noting his approval of the landscape plan.

Mr. McCann noted that the ZBA required approval of the final landscape plan, which is the main item they are bringing back tonight. When in front of the Planning Board, there was an issue raised by neighbors in regards to the proposed pool house. The petitioner is requesting that the Board allow them to withdraw without prejudice the pool house, as Mr. Black would like more time to work with the architect and the neighbors before moving forward with it. Other than that, this application address other items such as the lowering of the tennis court, moving of a/c units, and other change that would have fallen under the substantial completion category.

A Rose asked why the a/c units were moved off the roof, and whether or not this would upset the other neighbors as they are not on the ground. Mr. McCann noted they are tucked in the back of the house. Mr. Jacobs explained that the original system was inefficient, so the system was redone which reduced the number of units from 10 to six and they are located on the back side of the garage as close to the building as possible.

M. Kornitsky opened the public hearing.

Trevor Parsons, 106 Galloupes Point and abutter, lives directly beside where the units are going and he also has concerns about the pool house. He noted there was an agreement between Mr. Black and the Galloupes point neighbors that they would support his application as long as there was no obstruction to their sea views. The letter of support he provided for the Conservation Commission application was to approve the state of the pool as it was. M. Kornitsky noted that the petitioner is withdrawing the request for the pool house.

A Rose noted that if the Board gives these approvals, the applicant may not need to come back for a pool house if its just an accessory structure, unless it is a condition of relief.

Mr. McCann noted that the agreement referred to by Mr. Parsons supposed came from an email from a broker, but was never an agreement with Mr. Black. M. Kornitsky noted that an agreement between neighbors is outside of the Board's jurisdiction. If the ZBA granted relief with the pool house withdrawn from the plan and if the landowner went to look for a building permit, then it would have to have a condition that said no other structures on the property for it to come back to the Board.

The Board members discussed the history of the property and what the options were for reviewing a future pool house at

the site. The property has had significant relief granted previously, and so there are concerns. They discussed the possibility of a condition that meant any additional structures/modifications would need to come back to the Board.

Tom Belheumer, 100 Galloupes Point, states he just wants the pool house to be appropriate for the location. He does not want to be punished for being amenable neighbors, while Carpi has gotten everything he wanted. They are asking for the Petitioner to work with them.

M. Kornitsky asked if the petitioner would like to continue the item to have more time to work on the pool house, but Mr. McCann noted the petitioner would like to move in soon, which is also why they are withdrawing the pool house at this time.

H. Roman asked about screening for a/c units. Mr. Emmanuel replied that there will be a planting area as noted on the landscape plan to cover them. The Board also discussed the placement of the a/c units and the back-up generator.

M. Kornitsky moved to close the public hearing, seconded by B. Croft and unanimously approved.

MOTION: M. Kornitsky to approve Petition 19-32 with the withdrawal of any relief associated with the proposed pool house as shown on the plan and further required conditions: 1) no other structure shall be built on the property without returning to the Board for a modification of the special permit; 2) the timing of the generator is to be run for regular cycling and maintenance at a time that will have the least impact on the neighbors; 3) the screening will be as shown on the landscape plan to enclose the view and minimize the impact of noise of the a/c units; and 4) to make a finding that the relief that has been granted for this parcel has been substantial relief.

Mr. McCann noted that the first condition puts an onus on the property owner.

M. Kornitsky moved to open the public hearing; seconded by A. Rose and unanimously approved.

Mr. Black stated he just wants the rights of any other property owner. The Board members noted that they are trying to accommodate concerns, not preventing anything from being built.

M. Kornitsky stated the petition would be different if the Board had given initial relief for the home and it was a smaller structure. Having seen this property in stages for 12 years, it has gotten substantial relief. It is not in the Board's jurisdiction to protect views but he is also weighing the decision in terms of the impact of the relief previously granted.

Mr. McCann stated they will accept the conditions.

M. Kornitsky moved to close the public hearing; seconded by B. Croft, unanimously approved.

MOTION: M. Kornitsky moved to put the previously stated motion to a vote. Seconded by A. Rose, unanimously approved (voting members: M. Kornitsky, A. Rose, D. Doherty, B. Croft, A. Paprocki)

PETITION 19-34

197 ESSEX STREET

Petition by PROFESSIONAL PERMITS C/O GARRY POTTS seeking special permit – signs to update existing canopy and dispenser branding, provide illumination on fuel canopy, update existing freestanding sign, and replace two existing storefront signs with new designs. Property located at 197 ESSEX STREET (Map 12, Lot 102A).

A. Rose asked if the new plan was to eliminate the encroachment onto the right-of-way. Mr. Dubin confirmed that this was the only change; part of the foundation line would be brought back 8 inches, so it no longer encroached onto the roadway.

The new foundation would still be within the setback but would be more conforming than its previous nature.

MOTION: M. Kornitsky to continue the petition to the February 25, 2020 meeting. Seconded by B. Croft; unanimously approved.

PETITION 20-01

656 HUMPHREY STREET

Petition by JOAN E. CARADONNA seeking a special permit for relief from off-street parking requirements for an office and pet training facility. Property located at 656 HUMPHREY STREET (Map 23, Lot 14A). Ms. Caradonna was present. She has had a business for 21 years, and would like to establish a human and canine training location.

M. Kornitsky noted that the parking next to the property does not appear to be private parking. Ms. Caradonna replied that she has heard different things, but the building owner's say it is private parking for the residents. In any event, she is short parking spaces for the business, which is an office and personal service use.

There is no off-street parking, so the request needs relief for all required parking spaces. Visitors would need to park along Humphrey Street.

A. Paprocki asked about class size and Ms. Caradonna replied anywhere from three to 15, depending on the popularity and whether or not it is a class that involves bringing your animal. Her planned hours of operation are 8:30 am to 8:00 pm.

M. Kornitsky noted he is thinking about limits on the hours of operation and the class size. Ms. Caradonna noted that a class limit of 10 is reasonable if there are dogs in the class, but with just people she could host a larger amount. This would not happen often, but she is thinking about special events. After some discussion, the Board decided to add a sunset clause to bring the petitioner back before the Board to see how the operation is running and whether adjustments are needed.

There was no public comment.

MOTION: B. Croft to approve Petition 20-01 and grant a special permit for parking relief and off-street parking and loading requirements finding that the reduction is not inconsistent with public health and safety and promotes a public benefit, and the conditions of 5.3.3.0 are fulfilled, having considered that the benefits outweigh the adverse affects, and taking into consideration the following conditions: 1) the hours of operation being 8 am to 8 pm and 2) the petitioner will return in March 2021 to determine whether or not the conditions are still being satisfied (at no fee to the petitioner). Seconded by R. Landen; unanimously approved (voting members: B. Croft, R. Landen, D. Doherty, P. Pearce, H. Roman).

PETITION 20-02

42 HARRISON AVE

Petition by LEO MALKENSON seeking a dimensional special permit and a special permit (nonconforming use/structure) for a two-story addition to an existing single-family structure within the rear yard setback. Property located at 42 HARRISON AVENUE (Map 27, Lot 28). Mike McKloskey, architect, provided updated drawings, and an updated plot plan and survey to the Board. The Building Inspector and Town Planner had suggested the petitioner update the lot coverage to 33% to remain in the special permit range. The owners were also present.

A. Rose questioned the canopy over the new porch and its encroachment into the front yard setback. If it remains as is, it would be considered a variance. After some discussion between Mr. McKloskey and the Board, it was determined that the porch canopy would be redesigned to be eaves, which can project up to 5 feet from the foundation wall. Mr. McKloskey will submit updated drawings with that change.

There was no public comment.

MOTION: A. Rose to approve Petition 20-02 subject to the plans submitted and in accordance with the special provision that the front porch overhang should be a projecting eave of not more than three feet without columns, subject to a revision filed with the Planning Department. Seconded by D. Doherty; unanimously approved (voting members: A. Rose, D. Doherty, M. Kornitsky, A. Paprocki, B. Croft).

PETITION 20-03

163 BURRILL STREET

Petition by JIMMY RODRIGUEZ seeking a use special permit for a family day care for up to six (6) children. Property located at 163 Burrill Street (Map 3, Lot 108-A). Mr. Rodriguez was present and reported they currently have a family day care home licensed for 6 children, which operates from 7 am to 5:30 pm. They have three off-street parking spaces available, and at a minimum one (1) could be kept open for pick-up and drop-off. They opened the daycare in 2018 and at the time, they were told they did not need a permit from the Town. The Building Inspector called recently to say he received a letter and looked more closely into the regulations, and advised them to apply for a special permit. However, Mr. Rodriguez said they had already planned to shut the daycare down at the end of 2020, and currently only have three (3) children. They have also given notice to the state that this is the case.

Mr. Pollina, neighbor, stated that the property cannot support six kids and that Massachusetts law requires them to go in front of the Planning Board. M. Kornitsky replied that our Town bylaws provide instruction on who goes to Planning and who goes to Zoning, and that in this case the special permit is required from the Zoning Board. State law 15D, Section 1A provides for family child care homes and the board's jurisdiction to vote is on a very limited basis.

Michael Maniscalco, 168 Burrill Street, stated that parking is a major issue on the street especially because of the day care [referring to 172 Burrill Street]. Adding more cars would be a bad idea. M. Kornitsky noted that the Building Inspector had made a previous determination regarding that location as to the suitability of the parking plan.

B. Croft asked Mr. Rodriguez if they planned on taking any more clients. Mr. Rodriguez said no – their current clients have been notified that they are shutting down by the end of the year, and they won't take on anymore.

MOTION: R. Landen to approve Petition 20-03 for relief for a special permit for a family day care for up to 3 children, pursuant to section 2.2.0.0, with conditions that the permit shall expire no later than 12/31/2020, the hours of operation shall be 7 am to 5:30 p.m., and that one off-street parking space must be available during hours of operation. Seconded by ???, unanimously approved (voting members: R. Landen, M. Kornitsky, B. Croft, H. Roman, A. Rose).

PETITION 20-04

222 PARADISE ROAD

Petition 20-04 by HANLEY DELACRUZ seeking a use special permit and special permit – signs for reinstatement of the conditions of a prior special permit – Petition 29-7 – for the use and operation of an automotive repair and used car sales business. Property is located at 222 PARADISE ROAD (Map 5, Lot 209). Mr. Delacruz was present to represent the application and gave a brief description of his business. He is applying for a permit to expand his parking but also have the ability to sell cars, which was previously allowed under Silver Star's permit.

M. Kornitsky asked Mr. Delacruz to be specific on the type of repairs he is looking to do, as Silver Star was light repairs and there is a concern with the description that this could be considered major repairs.

Mr. D – brief description of his business. Applying for a permit for more parking but also the ability to sell cars, which was

something that was permitted previously.

The Board discussed what is a major repair, how it is defined, and what is permitted in the B-1 zoning district. The petitioner confirmed that he wants to do mostly do oil changes and tune ups.

The Board also discussed that the original petition 83-11 included a gas station, which was changed when Silver Star came in.

M. Kornitsky noted the parking plan will also need relief as some of the spots are too narrow, although the applicant does meet the parking requirement of 1 per 200 sf of gross floor area.

The Board asked the petitioner about auto sales and whether or not he continued auto sales after taking over the business, as that would help them determine whether or not the use had expired. Mr. Delacruz confirmed that he had sales in 2017, but hasn't conducted any sales since.

There was no public comment.

MOTION: M. Kornitsky to approve Petition 20-04 of Hanley Delacruz to permit the light service use and repairs, with the condition that there be no body work, and additionally to make a finding that the prior use by Silver Star Motors as permitted in the prior decision be found to have continued with the sale of at least one automobile in 2017, and that there is sufficient parking spaces (15 required for light motor vehicle repair and the site has approximately 22 parking spaces), and that the signage will need to comply with the B-1 regulations and not be greater than 45 sf in size and 30 inches tall. Seconded by D. Doherty; unanimously approved. (Voting members: M. Kornitsky, D. Doherty, B. Croft, A. Paprocki, A. Rose).

ADMINISTRATIVE REVIEW – PETITION 17-16

35 BURPEE ROAD

Administrative Review request of Comprehensive Permit Changes for CP File #17-16, Senior Residences at Machon. Mr. Drucas and two members from B'nai B'rith are here to represent the application. Mr. Drucas briefly reviews the comprehensive permit and the reason for the administrative review. Some changes were made to the plan as a result of discussions with Town staff, and therefore the Board is required under CMR 750-56 to make a determination as to whether the changes are substantial or insubstantial. They have provided documentation as to the changes and why they were made, and they believe it meets the requirements for insubstantial change. Ms. Grace noted that this project is a true collaboration which will create affordable housing for seniors.

The Board expressed that the changes were insubstantial and they complimented the applicant on an excellent filing. They look forward to the finished project.

MOTION: M. Kornitsky to make a finding that the project before the Board for administrative review for minor changes to the approved Petition 17-16, which the applicant has provided to the Board in said plans, that upon the Board's review of the changes we find that they do not amount to substantial changes. Seconded by D. Doherty; unanimously approved (members: M. Kornitsky, D. Doherty, B. Croft, A. Paprocki, A. Rose).

Meeting adjourned: 9:01 p.m.

Molly O'Connell
Senior Planner