



# 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  
BRADLEY CROFT, ESQ.  
ANTHONY PAPROCKI  
ANDREW ROSE

**ASSOCIATE MEMBERS**  
RON LANDEN  
HEATHER ROMAN  
EMILY STUART

## NOVEMBER 28, 2017 MEETING MINUTES

**Time:** 7:05PM – 8:10PM  
**Location:** Swampscott High School, 200 Essex Street, Rm B129  
**Members Present:** M. Kornitsky, D. Doherty, E. Stuart, H. Roman, A. Rose, R. Landen, A. Rose, B. Croft  
**Members Absent:** A. Paprocki  
**Others Present:** Joe Correnti (Attorney), Robert McCann (Attorney), Stephen Roberts (Petitioner), Patricia Ward (Petitioner), Judy Golditch (Resident), Mike Gamache (Resident), David Dishman (Petitioner), Andrew Levin (Asst. Town Planner)

Chairman of the Board, M. Kornitsky called the meeting to order at 7:05PM.

### MEETING MINUTES

Motion by M. Kornitsky to approve the October 24<sup>th</sup>, 2017 meeting minutes, seconded by E. Stuart, unanimously approved.

## ZONING RELIEF PETITIONS

### PETITION 17-22

### 25 GLEN ROAD

This is an application by Eric Lomas, Esq. for owner Mark Delisle seeking a special permit (nonconforming use/structure), site-plan special permit, and dimensional variance for the conversion of an existing single-family home and the construction of a new two-family residence as a second principal structure on the property. This petition was continued from the October 24<sup>th</sup> meeting.

M. Kornitsky explained that the applicant and their representatives had asked (previous to the meeting) to continue this petition to the next meeting of the Board. M. Kornitsky added that the applicant had already signed and emailed a continuation form to the Board.

**MOTION :** by M. Kornitsky to continue Petition 17-22 to the December 19<sup>th</sup>, 2017 meeting, seconded by H. Roman, unanimously approved.

### PETITION 17-20

### 15 TIDD STREET

This is an application by Cynthia M. Cox seeking a dimensional variance to renovate the existing second floor to match the footprint of the first floor. The existing roof at rear back corner of the home extends over the property line into the neighbor's property, and will continue to extend the same distance into the neighbor's property after construction. House is currently non-conforming and will continue to be so afterward. This petition was continued from the October meeting.

A representative of the petitioner began by handing in a certified plot plan and briefly discussed the plan with M. Kornitsky, who noted that the foundation of the existing building will not encroach on the abutting lot. The representative explained that the amount the overhang encroaches currently will remain the same but be higher, and explained the plan is to add a second story onto the existing structure.

M. Kornitsky explained that after reviewing the Zoning Bylaw, that he believes the relief requested would fall under section 2.3.6.5 as a dimensional special permit and not a variance.

M. Kornitsky asked if there was anyone present that wished to comment, there was none. M. Kornitsky and A. Rose briefly discussed the dimensional special permit relief.

**MOTION** : by A. Rose to approve the plans as submitted for the relief requested, seconded by R. Landen, unanimously approved.

## **PETITION 17-24**

## **644 & 646 HUMPHREY STREET**

Petition 17-24 is a request of Area Two Realty LLC seeking to amend a Special Permit issued for the property, specifically a condition from the decision requiring all occupants of the building on the property (commonly known as “Humphrey Plaza”) to apply to the Board of Appeals for a Special Permit to occupy.

A. Rose stated that the attorney representing the property owners (also the petitioners) represents himself too in another matter, but mentioned that he is not recusing himself from the hearing, as he wished to be a part of the discussion. M. Kornitsky mentioned that there were enough members present to constitute a quorum without the need for A. Rose to vote.

Attorney Joe Correnti introduced himself and stated he is representing Area Two Realty, LLC, the owners of the property and petitioners. Attorney Correnti began by explaining a brief background of the property and a 1985 ZBA decision which holds certain restrictions on the property. Attorney Correnti explained that at the time of this 1985 Decision there was concern about the property’s proximity to an abutting residential neighborhood and possible future tenants.

Attorney Correnti explained that condition eight in the 1985 decision requires that all future occupants of the building must go before the ZBA and request a special permit, even if their use is by right. Attorney Correnti mentioned the hindrances that this creates for both the building’s owner and future tenants. Attorney Correnti added that the plaza is running well and stated that the tenant mix has changed over time, but overall it is “good”, and asked the Board to eliminate condition number 8.

The Board briefly discussed the relief that was being sought. A. Rose explained why he believed another condition in the 1985 decision should also be eliminated. A. Rose explained that the Town had voted to change the Zoning bylaw it had stemmed from. The Board stated that since the issue raised by A. Rose was not part of the current petition before the Board, they should only vote on the condition specified in the legal notice. The Board and Attorney Correnti briefly discussed this.

M. Kornitsky asked if anyone present wished to comment. An audience member asked for clarification on the request, M. Kornitsky explained.

Another audience member asked if a liquor store would be able to go into the plaza without public comment, Attorney Correnti and the Board mentioned section 41 the Zoning Bylaw would make a possible liquor store have to go in front of the Board. There was no other comments.

The Board was constituted as D. Doherty, B. Croft, H. Roman, and R. Landen, and E. Stuart.

MOTION : by B. Croft to allow Petition 17-24 to amend the special permit dated June 25, 1985 to eliminate and remove condition number 8 from that decision which requires that all occupants must obtain a special permit so that the otherwise as of right uses do not need to come before the Board for the approval of a special permit, seconded by D. Doherty, unanimously approved

## PETITION 17-25

## 48 BRADLEE AVE

This is a Petition by David and Kristen Dishman seeking a special permit (nonconforming use/structure), site plan special permit, and a dimensional variance, to demolish an existing fire damaged garage, and construct a new 2 car garage with bedroom and bath above. The applicant is seeking a dimensional variance from the required 7.5' side-yard setback to 2'8" and; a site plan special permit whereas the proposed addition increased the gross floor area of by structure by more than 15% and is greater than 800 sf.

The applicant David Dishman was present, and briefly explained the request and the previous fire that happened at the property which lead to the request being brought before the Board. Mr. Dishman stated to the Board that he will be revising and changing the plans and asked for a continuance, the Board agreed.

MOTION : by M. Kornitsky to continue Petition 17-25, unanimously approved.

## PETITION 17-26

## 14 BAY VIEW DRIVE

Petition 14 Bay View is a request by Stephen Roberts and Patricia Ward seeking

Attorney Bob McCann was present and stated that he is representing the petitioner (owners) who were also present as well. Attorney McCann began by stating that the "as far as they know have 100 percent neighbor support", and handed in a list of neighbor signatures, stating they saw the plans. Attorney McCann added that there are some neighbors that are present that wish to speak in support.

Attorney McCann briefly explained the history of the property, including a fire in 2016, and a previous Zoning application regarding the property, brought by the previous property owner before the Board.

Attorney McCann explained the proposed home has a lot coverage of 18% while the home that was proposed by the previous owner was 23% and added that his clients proposed home will have more open space, and the rear yard setback will be expanded. Attorney McCann stated that his clients proposed home will be a 5% increase from the home previously destroyed by fire. Attorney McCann stated that Director of Community Development Peter Kane had reviewed the plans and had questioned some elevation plans and heights. Attorney McCann mentioned that his client has handed in new plans with slight revisions which show the basement is below grade which makes the proposed home comply with the story count, and that the attic was revised to fit the story count as well. Attorney McCann mentioned

that a proposed deck is also shown in greater detail on the revised plans that were handed in, adding that P. Kane also asked that there not be a second curb cut, which the owners were fine with.

Attorney McCann stated that P. Kane mentioned in his comments that it could be possible to move the proposed home back and gain 8-feet, but mentioned that when looking at the survey the proposed location will match with other homes. Attorney McCann added that the proposed home fits the neighborhood, and that the proposed plan keeps the backyard open and described a significant drop in topography in the back of the property.

Attorney McCann again mentioned the neighbor support of the plan to build on the empty lot and asked the Board to grant the relief.

Attorney McCann then explained that a variance was asked for because the proposed home is not being built on the same foundation, and the proposed home will be moved away from the neighbors home on the right, and that they need a variance because it is not a rebuild. Attorney McCann added that the request does fit the criteria for a variance, as the previous home did burn down.

M. Kornitsky asked if there was anyone present who wished to speak against the proposal, there was none. M. Kornitsky then asked to hear from those in favor.

Barry and Judy Golditch, 10 Bay View Drive stated they are in support. M. Kornitsky asked if they would like the proposed home in its current proposed location or to be pushed back, both agreed the current proposed location is where they want it.

Mike Gamache, 28 Bay View Drive mentioned that he is in support of the proposed plan and mentioned that the proposed will fit into the neighborhood.

M. Kornitsky and D. Doherty briefly discussed the type of relief to allow. D. Doherty mentioned that relief under section 2.3.6.5 could be granted rather than a variance, and explained his reasoning, M. Kornitsky mentioned that he agrees. M. Kornitsky asked Attorney McCann if he was "OK" with a dimensional special permit instead of a variance, Attorney McCann mentioned he was.

B. Croft mentioned that the abutting neighbor most concerned with the previous proposal and application, will now have a greater distance their home and the proposed, and added that the proposal comports with what D. Doherty had earlier explained.

Attorney McCann mentioned to the Board that the everything on the new proposal, besides the front yard setback will conform, B. Croft added that no nonconformity will be made worse. E. Stuart mentioned that the proposal fits in with the neighborhood.

The Board briefly discussed and the dimensional special permit relief compared to the original variance request, M. Kornitsky mentioned that the petitioner will need relief due to the increase in volume, but could be part of finding for the dimensional special permit. D. Doherty and M. Kornitsky briefly discussed this, A. Rose mentioned that the nonconformity will be remaining the same, and the finding is that the volume will not increase the nonconformity.

The Board was constituted as M. Kornitsky, D. Doherty, A. Rose, H. Roman, B. Croft.

**MOTION :** by D. Doherty to approve Petition 17-26 of Stephen Roberts and Patricia Ward, requesting a special permit to reconstruct a previously existing single family structure , that had been destroyed by fire. With the new structure being setback from the front property line by 8 feet where 20 feet is required, which was the case with the previous structure. The Board finding that a variance is not required and that the house be built in accordance with the plans submitted at

the meeting (11/28/2017), and that also based on representations made by Attorney McCann regarding Peter Kanes review and approval of the issues regarding the basement level and upper floor, seconded by M. Kornitsky, unanimously approved.

Attorney McCann on request will write the decision.

MOTION : by M. Kornitsky to close the meeting, seconded by B. Croft, meeting adjourned at 8:10 PM.

Andrew Levin  
Assistant Town Planner