



# 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

## JANUARY 23, 2018 MEETING MINUTES

**Time:** 7:17PM – 8:58PM  
**Location:** Swampscott High School, 200 Essex Street, Rm B129  
**Members Present:** M. Kornitsky, D. Doherty, E. Stuart, H. Roman, A. Rose,  
**Members Absent:** A. Paprocki, B. Croft, R. Landen  
**Others Present:** Gene Nigrelli (Petitioner), Marty Bloom (Petitioner), Cinder McNerney (Resident), Peter McNerney (Resident), Mary Ellen Fletcher (Resident), Esther Tibbetts (Resident), Eric Lomas (Attorney), Ryan McShera (Architect), Mark Delisle (Petitioner), Tim Rhodes (Resident), Sandra Ciani (Petitioner), Andrew Levin (Asst. Town Planner)

Chairman of the Board, M. Kornitsky called the meeting to order at 7:17PM.

### MEETING MINUTES

Motion by M. Kornitsky to approve the December 19th, 2017 meeting minutes, seconded by E. Stuart, unanimously approved.

## ZONING RELIEF PETITIONS

### PETITION 17-28

435 PARADISE ROAD

Due to late arrival of a member of the Board, the meeting did not begin until after 7:15pm. Previous to the meeting beginning, the representative from Petition 17-28 had asked M. Kornitsky to be heard earlier.

M. Kornitsky called forth Petition 17-28, which is an application of Gourmet Fusion, who are seeking a use special permit. The petitioners are requesting the special permit to have karaoke or light jazz music for occasional evening entertainment.

Gene Nigrelli, explained that he is present on behalf of Gourmet Fusion and their new restaurant, "Chi". Mr. Nigrelli explained that the restaurant is looking to do "low-key and low-scale entertainment" every other week and that the entertainment will be similar to another restaurant owned by the same ownership group in Beverly, Massachusetts.

M. Kornitsky asked if there was anyone present who wished to be heard on the matter, there was none.

M. Kornitsky inquired about the hours, Mr. Nigrelli explained that they are looking to do the entertainment on Friday evenings within their hours of operation. M. Kornitsky asked if there was any outdoor seating, Mr. Nigrelli responded that there is no outdoor seating, and all seating is interior.

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

MOTION : by E. Stuart to approve Petition 17-28 for a use special permit, seconded by H. Roman, unanimously approved.

A brief discussion between the Board and Mr. Nigrelli took place regarding hours of operation and entertainment, M. Kornitsky explained they would be consistent with the hours of operation.

## **PETITION 17-04**

141 HUMPHREY STREET

This is a review of a sunset provision placed on the special permits granted in April 2017 for a roof-deck awning structure and additional signage granted to Swampscott Associates, LLC.

Marty Bloom was present on behalf of Swampscott Associates, LLC. M. Kornitsky explained that at the April meeting of the Board, there was a sunset review placed on the relief granted for the awning structure and the signage on the building. Mr. Bloom explained that the awning structure became operational at the end of June.

M. Kornitsky asked if Mr. Bloom is proposing any changes to the awning structure or signage, Mr. Bloom mentioned that they are looking into adding heat to the structure.

M. Kornitsky mentioned that there have been questions about the noise, regarding the entertainment license for the property. M. Kornitsky explained that Petition 16-09 (a petition previously filed regarding the property) which has conditions was already approved by the Board.

M. Kornitsky asked Mr. Bloom to clarify the entertainment license the property was granted, Mr. Bloom explained that the Board of Selectmen had put some limitations on the license, including, noise to be no higher than 85 decibels. Mr. Bloom added that the Town does not have regulations on noise, but that he agreed with the Board of Selectman's condition of 85 decibels.

M. Kornitsky asked if anyone wished to be heard on the review of the structure on the roof.

Esther Tibbet, 9 Reddington Street, asked if the structure will be made more permanent. M. Kornitsky explained the previous relief granted for the structure and the concerns previously stated by the Board, M. Kornitsky also clarified why the structure was being reviewed. M. Kornitsky added that if Mr. Bloom wished to add to the structure they would have to come back before the Board, and clarified what the petitioner would need to request for relief.

Ms. Tibbets asked about the signage, M. Kornitsky clarified the areas where signage was approved.

Cinder McNerney, 201 Humphrey Street, asked if there was any consideration of doing something further with the structure to mitigate the noise, Mr. Bloom mentioned that they are not asking for more space or signage, and mentioned "what's done, is done". Mr. Bloom mentioned that he could possibly look into doing something about an area of the deck where the noise could be coming from.

M. Kornitsky clarified what would have to happen if Mr. Bloom wished to mitigate the noise.

Mary Ellen Fletcher, 35 Puritan Road, mentioned that she had made numerous calls regarding the property, and explained that she lives less than a quarter mile from the property. Ms. Fletcher explained that the sound travels over the ocean and that the wind plays a part in this as well. Ms. Fletcher asked if there was a structure the restaurant could

put up to contain the sound. M. Kornitsky explained the Board of Selectmen put 85 decibels as the condition of the license and that this will be reviewed annually. M. Kornitsky clarified why this would be for the Board of Selectmen to review, and mentioned that if there is a problem with noise to seek out the Board of Selectmen or the Building Inspector regarding decibel level.

M. Kornitsky added that he was encouraged to hear the petitioner state that he is interested in working with the neighbors regarding noise. Mr. Bloom mentioned that they have purchased a noise meter to monitor the noise, and stay within their limitations.

Ms. Tibbets asked if the structure on the top of the building will stay as it is, Mr. Bloom responded it would.

A. Rose and M. Kornitsky briefly discussed the relief and sunset.

Peter McNerney, 201 Humphrey Street, mentioned that he echoed the sentiments regarding noise level, and was Glad to hear Mr. Bloom was interested in working with the neighbors. Mr. McNerney mentioned his issues that he has with the noise and the restaurants hours, Mr. Bloom responded that closing time is 11pm.

Mr. Bloom and Mr. McNerney briefly discussed.

M. Kornitsky asked for any either comments, there were none.

MOTION : by M. Kornitsky to close the public hearing, seconded by D. Doherty, unanimously approved.

MOTION : by M. Kornitsky to remove the sunset provision from the relief provided relative to the structure on the deck and signage, seconded by H. Roman, unanimously approved.

## **PETITION 17-22**

25 GLEN ROAD

This is the petition of Eric Lomas, Esquire for owner Mark Delisle, seeking a special permit (nonconforming use/structure), site-plan special permit, and dimensional variance for the conversion of an existing structure on the property, this petition was continued from December.

Attorney Lomas, project architect Ryan McShera and property owner Mark Delisle were all present.

Attorney Lomas began by explaining that at the last meeting the Board mentioned they would like to see more neighbor input into the project, as well as what a large singular structure would look like on the lot. Attorney Lomas updated the Board, explaining that they had met with the neighbors and received feedback on the project.

Mr. McShera showed the Board a rendering of what the large single structure would look like on the lot. Mr. McShera stated that they could construct a large building and meet all dimensional requirements, and potentially get a special permit for 8-units. Mr. McShera and M. Kornitsky briefly discussed the footprint of the hypothetical larger single structure.

Attorney Lomas mentioned that the neighbors provided feedback that they were concerned with the mass of constructing a large single structure on the lot. Attorney Lomas and the Board discussed the project and relief he is seeking, Attorney Lomas mentioned that the special permit is for the setback, but the variance is due to the construction of the proposed second building. The Board briefly discussed and clarified the relief being sought, Mr. Delisle stated that

he needs a variance for constructing two primary structures on the lot. The Board continued to discuss the petition and the lot.

Mr. Delisle explained that the dimensional variance ask is due to the elevation change from one end of the lot to the other. Mr. Delisle explained that there is about a 20-foot difference in elevation between the two ends, and this is part of why he is seeking a variance. Mr. Delisle mentioned that he had thought about trying to connect the two buildings, but believes that the two structures will be in keeping more with the character of the neighborhood.

Mr. Delisle mentioned that he spoke with the neighbors, and explained that they “don’t necessarily” want to see the two buildings connected, and added that he spoke with the Deputy Fire Chief who did not want to see the building connected as well. Mr. Delisle explained the changes that were made with input from the neighbors. Mr. Delisle mentioned the rooflines were lowered and the sizing was made smaller.

A. Rose explained his thoughts on the petition, and the Board briefly discussed the relief and possible ways for the petition to satisfy the Bylaw. The Board also discussed the hardships stated by the petitioner as their reason for seeking a variance.

Mr. McShera explained that the variance is to add a second building to the lot, and that this request is due to the topography of the site and the difficult soil. D. Doherty and Mr. McShera briefly discussed this, Mr. McShera explained there is exposed ledge in the Cardillo Terrace side.

A. Rose proposed an idea to the Petitioner on how the project could potentially meet the Bylaw regulations.

Mr. McShera clarified that the grade change between both ends of the property is 24-feet.

D. Doherty mentioned that there is topography and ledge issues, but did not see the hardship because the petitioner could just build a single structure on the lot.

The Board continued to discuss the relief, possible project changes, and the hardship’s the petitioners identified and who it affects.

M. Kornitsky asked for the neighbor’s thoughts.

Tim Rhodes, 44 Glen Road, began by thanking the petitioner for reaching out to the neighbors, and stated the meeting that the petitioner had with the neighbors was very productive. Mr. Rhodes stated that he saw both the single structure plan and the two-structure plan, and mentioned that he would like to see the latter. Mr. Rhodes explained that he would rather want to see only two units, but understands the petitioner could do 8-units with a special permit, and stated that he was against a giant building on the lot.

Mr. Rhodes explained that if the petitioner is proposing 4-units on the site, then two buildings would be the best way to do it, but also mentioned that the density of the neighborhood beginning to increase. Mr. Rhodes mentioned that he would like to see off-street parking due to the narrowness of the road.

Jean Reardon, the former owner of 25 Glen Road mentioned that there is a “great deal of ledge” on the back of the property, and stated that the variance is justified, and described the difference in topography.

M. Kornitsky asked if anyone else wished to be heard, there was none. M. Kornitsky then asked for thoughts from the Board.

D. Doherty mentioned that he is concerned over the issue of what the hardship is, explaining that he believes the ledge on the property triggers the hardship, but wants to know what the hardship is due to the ledge and topography.

Mr. McShera explained the hardship, including building height and the shape of the lot, D. Doherty stated that he still believes the petitioner is missing the hardship piece of a variance. D. Doherty asked how, if the petitioner was to build something within the Bylaws, it would hurt them, and then explained his thoughts on who the hardship possibly falls on.

The Board continued to discuss the lot, and asked to see a plan showing the lot elevation and the two proposed structures on the lot, Mr. McShera mentioned they did not have one.

M. Kornitsky mentioned possibility of getting the project to only need a special permit, and mentioned that he could poll the Board to see how they would vote on a variance. M. Kornitsky clarified that there are two steps to this application analysis, the variance and the ability to grant the special permit for the number of the units. M. Kornitsky asked the petitioner if they would be amendable to a one-unit structure and a two-unit structure on the lot. A. Rose mentioned his thoughts on the variance and the special permit, and mentioned he could accept the variance, but would want the two-unit and one-unit idea.

M. Kornitsky asked the petitioner to continue to work with the neighbors and come back with revised plans.

M. Kornitsky then polled the Board regarding the variance.

H. Roman mentioned that she would like to see topo views of the sides of the buildings, M. Kornitsky added that the petitioners should consider the area when deciding where to put the one-unit and two-unit structures, and to look at things including width of road and traffic.

H. Roman and E. Stuart both mentioned they would consider it at the next meeting, D. Doherty mentioned that he is still a maybe, and that he is not sold on the hardship. M. Kornitsky explained to the petitioners that there are two members possibly receptive to the granting of the variance, two members considering it, and one member on the fence.

The Board and the petitioner briefly discussed next steps.

MOTION : by M. Kornitsky to continue the matter to February 27<sup>th</sup>, seconded by H. Roman, unanimously approved.

## PETITION 17-27

## 96 PURITAN ROAD

Petition 17-17 is a request by Jim Dennis, seeking a dimensional variance to construct a rear stairway out of the unit for a second means of egress in the rear building on the property.

Ryan McShera, of Red Barn Architecture, explained to the Board that he was recently hired by the petitioner and is working on the project, performing code study work. Mr. McShera explained he is working to figure out how to make the unit code compliant, and added there are no plans yet, and mentioned that the petitioner is working on plans for the Conservation Commission as well. Mr. McShera asked the Board for a continuance.

MOTION : by M. Kornitsky to continue, seconded by D. Doherty, unanimously approved.

## PETITION 17-29

## 25 THE GREENWAY

Petition 17-29 is the petition of Sandra Ciani requesting a dimensional special permit, special permit (nonconforming use/structure), and site plan special permit. The applicant is seeking to add a second story to a currently existing single-family residence, occupying the same footprint, the rear yard setback is insufficient and relief is required.

A gentleman with Ms. Ciani handed the Board a locus map and more in-depth plans for the project, as recommended by the Planning Board. M. Kornitsky asked if there will be any trees being removed, the gentleman stated there was not be, only some trimming. M. Kornitsky asked if all rain water will be captured on the property, the gentleman stated it would, M. Kornitsky asked if any downspouts are being removed, the gentleman stated there were none being removed.

M. Kornitsky asked for any public comments, there was none.

M. Kornitsky asked the Board for comments. H. Roman asked if they had spoken with the neighbors, Ms. Ciani stated that they live on a hill, and that the one house closest to them is a family friend. The Board and the petitioner briefly discussed and clarified the location of the home, as well as shutters shown on the plans.

MOTION : by M. Kornitsky to close the public meeting, seconded by H. Roman, unanimously approved.

MOTION : by A. Rose to approve Petition 17-29, the application of Sandra Ciani, requesting a Dimensional Special Permit, site plan special permit, and in accordance with the plans filed here with, seconded by H. Roman, unanimously approved.

Meeting closed at 8:58pm.

Andrew Levin  
Assistant Town Planner