

**ZBA MINUTES**  
**Meeting Of 4/16/2014**

**Members present:**

Marc Kornitsky, Esq. Chair  
Dan Doherty, Esq. Vice Chair  
Harry Pass, Esq.  
Don Hause  
Anthony Paprocki  
Douglas Dubin

**Others present:**

Attorney Ken Shutzer (representing DeBoever)  
Derek Bloom (architect)  
Attorney Pare (representing Sprint Spectrum)

Meeting called to order at 7:10 pm by Chair Kornitsky.

**Petition 14-1** of P & C DeBoever request for special permit to demolish existing home and construct a new conforming home on an existing nonconforming lot. Property located at 61 Phillips Beach Ave. Map 30, Lot 10.

Patrick and Connie DeBoever appeared at the public hearing and were represented by Attorney Ken Shutzer Esq. Petitioner presented their plans and explained that while the proposed structure will be 737 square feet larger than the existing structure, it will have a smaller footprint and provide approximately 2% more open space on the site. The petitioner also addressed the nonconforming 100 foot site frontage, noting that the site was typical to many of the homes in the area.

Abutter Irene Weinstein of Phillips Beach Avenue spoke at the hearing. Ms. Weinstein expressed concern about potential blasting requirements for the project, noting a concern for recent work on her property. The petitioner's architect, Bloom, responded to the abutter's question noting that the project scope included expanding the current basement. They anticipated that chipping would be sufficient to expand the footprint and that blasting was not likely for the proposed work.

A. Paprocki moved, and D. Dubin seconded, motion to grant the proposed relief for a so-called Section 6 special permit and site plan special permit to allow the construction of the proposed new structure subject to the following conditions: work to be in accordance with plans presented to the Board; petitioner should consider Fire Department recommendation to incorporate a sprinkler system in proposed structure, but is not required to add this system by the ZBA; petitioner shall notify all abutters if blasting or any additional sub-surface work is deemed necessary for the work proposed; and coordination of pre-blast inspection surveys with abutters as required. Motion unanimously approved. A. Paprocki will write the decision.

**Petition 14-3** of Bryce Suyden for use special permit and parking & loading requirements special permit to legalize the use as a three-family dwelling. Property located at 11 Rockland St, Map 2, Lot 162.

The property has been functioning as a three-family since 1938. Swampscott Building Inspector has no records of the Zoning bylaws in effect in 1938. Multi-family use was allowed prior to 1924 and allowable only by special permit since 2009. Building Inspector could not determine with certainty that the premises was a legal nonconforming three-family dwelling and wrote a letter to Mr. Suydam indicating that a Board of Appeals special permit would be required.

Petitioner presented a Plan of Land dated April 6, 1949 from Bradford and Weed, Civil Engineers in Lynn, MA recorded in Essex South Registry of Deeds which added in 4 parking spaces in the front yard of the property and two tandem parking spaces to the left of the dwelling adjacent to the concrete walk. Petitioner argued that he met all the requirements of a legal three-family, including parking, as indicated on the above mentioned Plan. The Board questioned Mr. Suydam about the existing parking arrangement and neighbor Justina Oliver of 29 Blaney St. expressed concern that the parking spaces in the front yard area currently block the sidewalk, making walking along Rockland Street difficult.

Chairman Kornitsky inquired if the Board would be agreeable to accepting the Petition without making any parking determination, while Board Member Harry Pass questioned whether or not the Petition could be approved while eliminating the two parking spaces that currently block pedestrian access along the Rockland

Street sidewalk. In a compromise, the Board looked at the possibility of making no determination as to parking, so long as no motor vehicles would block pedestrian walkways and sidewalks, while still minimizing on-street parking. In addition, the Board would include as a condition to any approval that the Planning Board Site Plan Review Comments from the Fire Department be incorporated into the ZBA decision so that the smoke detectors, carbon monoxide detectors, and fire alarm systems are improved and be maintained up to code to ensure proper public safety in the building.

Board Member Harry Pass made a motion to grant a use special permit and a special permit pursuant to section 3.2.2.3 Parking and Loading Requirements subject to the conditions that the petitioner shall comply with the conditions of the Planning Board Site plan Review comments dated April 7, 2014, so that the smoke detectors, carbon monoxide detectors and the fire alarm system are up to code to ensure proper public safety. Property shall be utilized as a three-family dwelling. No determination is made as to the amount of parking spaces. However, parking shall be used in a manner so as to minimize on-street parking and any motor vehicles parked at the site at 11 Rockland Street shall not substantially interfere with pedestrian egress along the sidewalk of Rockland Street. Motion seconded and approved unanimously. Board Member H. Pass will write the decision.

**Petition 14-4** of Frederico Cerullo for dimensional special permit and special permit for rear setback relief in order to construct an addition greater than 15% on a nonconforming lot. Property located at 6 (rear) Fairview Avenue, Map 13, Lot 41.

The petition was withdrawn without prejudice by the Board.

**Petition 14-5** of Spring Spectrum, LP for use special permit to modify its existing telecom facility to install three (3) panel antennas, three (3) remote radio heads (RRH), and 93 hybrid cables to existing water tank. Original special permit provided for installation of nine (9) antennas; currently has three (3) antennas. Property located at 10 Plymouth Lane, Map 14, Lot 78.

Attorney Pare, representing Sprint Spectrum, explained the petition to the ZBA. Numerous neighbors opposing the petition were also in attendance at various public hearings on this petition. There was significant discussion about whether the additional antennas and RRHs exceeded the limitations for same as contained in Section 4.3.5.2. of the Town of Swampscott Zoning By-Law (the By-Law.) There was also discussion about the condition of the equipment and associated cables existing on the tower. The Board emphasized the need to comply with the existing condition contained in the 2009 Decision regarding painting all equipment and associated cables to match the color of the water tank, which requirement was acknowledged and agreed to by Attorney Pare on behalf of the Petitioner. Attorney Pare suggested that the logical and proper process to follow for any issues relating to compliance with any conditions contained in the 1998 Decision or the 2009 Decision be through the Town of Swampscott Building Official.

The Board also discussed at length the interaction of the 1998 Decision, the 2009 Decision, the By-Law, and the lease between the Town of Swampscott and the petitioner giving the petitioner the right to install antennas on the Swampscott Water Tower. Attorney Pare discussed the impact of Section 6409 of the federal Middle Class Tax Relief and Job Creation Act of 2012 (the "Act"), signed into law by the President on February 22, 2012, on the petition. The Board was informed that the Act provides that

"a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station."

As depicted on the Plans, petitioner's proposed modifications constitute and eligible facilities request under the Act; petitioner's proposed modifications will not increase the height of the water tank; petitioner will install its equipment inside the existing equipment cabinets; petitioner's modifications will not protrude from the edge of the water tank more than twenty feet; and petitioner's modifications will be within the current boundaries of the equipment cabinet located at the base of the water tank. The Board finds that petitioner's proposed modifications do not substantially change the physical dimensions of the water tank or base station pursuant to the Act and that, under the Act, the Board may not deny, and must approve, an eligible facilities request.

Hearing was continued to next hearing on May 21.

Motion to adjourn unanimously approved; meeting adjourned at 9:15 PM.

Helen Kennedy  
Zoning Board of Appeals Secretary