

**TOWN OF SWAMPSCOTT ZONING BOARD OF APPEALS  
ZONING BOARD MINUTES 2/25/15  
PUBLIC HEARING - TOWN OF SWAMPSCOTT ZONING BOARD OF APPEALS**

**Public hearing held WEDNESDAY, FEBRUARY 25, 2015 at 7:00 PM at  
SWAMPSCOTT SENIOR CENTER, 200 ESSEX (rear)**

**Members present:**

**Marc Kornitsky, Chair  
Dan Doherty, Esq. Vice Chair  
Don Hause  
Anthony Paprocki  
Andy Rose  
Doug Dubin**

**Members absent:**

**Harry Pass, Esq.**

**Others present:**

**William DiMento (attorney), Peter Pitman (architect), Kenneth Shutzer (attorney)**

**Petition 14-30 (11 BAY VIEW AVENUE)** Attorney DiMento presented the petition to the Board for Petitioner Carangelo. She has worked on moving garage back to make it more palatable to immediate abutter Stone.

Architect Pitman reviewed the changes that have been made. The setback has been reduced; however a 3' special permit is still required. Mr. Pitman reviewed changes that were made: moved garage back as far as they could, did study of the interior of garage in terms of circulation within the garage. Looked at reducing garage, maintaining the roof line, advantages of pushing garage back, reducing overall mass on the street and eliminating the dormer. Moving back opened up a sight line, re-established the view corridor. Mr. Stone is concerned about new garage as reflected in the plans presented tonight. Petitioner met with Mr. Stone, The side-yard setback is 5.3' as opposed to the 7.5' required. The other relief is in the vestibule area.

Petitioner is requesting the ZBA to consider this as it is substantially more detrimental than the pre-existing condition. They are asking for minor change in the house which will allow Ms. Carangelo to have a garage. This is not a request for a variance, have to look at every case that comes before the Board, if you adopt every case that comes before you, takes the protection out of it. Have to see what is reasonable, garage or no garage. The relief being sought is much less detrimental to the neighborhood than what can be done as of right. This is a practical rather than a legal matter.

Board member Paprocki asked about reducing the garage about 3'. Abutter Myron Stone, immediate abutter, told the Board he bought his house when Ms. Carangelo's property was an empty lot. Architect Pitman said they are trying to select a plan which would not be intrusive but Mr. Stone says he feels as if he can reach out and touch the car. Simply wants to be protected by zoning bylaws.

No questions from the Board. Chairman Kornitsky wants to get some feedback on the petition if the vote is going to be negative, petitioner has done a nice job with house and relief requested; he won't be able to get to YES for the garage. Board member Doug Dubin said he thinks every house should have a garage. He thinks garage can be 10' Vestibule is not a problem, he would stay with denial, a NO vote. Board member Don Hause agrees with Chairman Kornitsky, can get there on the vestibule but not with the garage.

Andy Rose: Once the bylaw was changed, Zoning Board of Appeals has stuck to its guns. He doesn't understand how everyone can get to the front with no problem but not with the garage. Board member Paprocki would agree with Andy Rose. Board would agree petitioner can withdraw the petition without prejudice.

**Petition 14-18 (GLEN ROAD)** Attorney Kenneth Shutzer presented the petition of Mr. Connor. Mr. Shutzer told the Board it remains his belief that this does not apply to the matter at hand. Bylaw section 2.2.7.4 applies to structure that lost whatever protection it had. He researched the Board's request and will provide documents to Board this evening. Abutter Bailey presented a statement and informed the Board that he stored a truck in the garage and did not pay any fee but the statement was notarized. It was also stated that Mr. Mosho rented the property for \$40 per month. A letter from Shirley Jacob stated a motorcycle was stored in the garage along with another car. She did not pay rent for the storage. Elwood Motors occupied space and vacated due to the sale of the property. He provided proof and was reference to the property was "broom clean."

This is the default position of Doug Dubin that 2.2.7.4 applied. He has never been inside. Mr. Shutzer: If the information he provided meets the standard, he thinks it is more than sufficient and referred to Mrs. Hartman's observations about the use of the property.

Board had issue with the way the structure is situated on the lot which has not been taken up yet. If Board will accept the notarized statements and Mr. Toohey's signed form. Mr. Shutzer wants sense of the Board that non-use is fallacious, then get to the non-conforming structure to allow its demolition under 2.2.7.5. New structure would have to be conforming and has to be within the envelope, it would be a conforming structure that is the position of the petitioner.

Board member Dan Doherty: Record referred to letter from abutter Ms. Hartman dated 2/25/15 and asked her about storage of a car in the building which then rotted out and was towed away four or five years ago. Ms. Hartman said she has been in the garage and it has been empty for a long time. Neighborhood kids play there all the time, not much activity there. Abutter from 36 Glenn Road: At last meeting they had asked if there were rental receipts for

the period. They were looking for evidence that it had been rented out. Board Member Doherty: His thoughts so far, he has done a lot of work and looked in the garage after the last meeting. It is a complex whether property has some kind of protection. There is no easy answer to it. Section 2.2.7.4 - He thinks that Mr. Shutzer has relied on 2.2.7.5 and 2.2.7.2 apply to protection that has not lost the grandfather status.

Factual issue has to be established for whether it lost its protection. He has problems with the presentation. The petition is the petition. There is no issue that the property has been abandoned. He read from Mr. Shutzer's petition of 8/19/14. On 11/19/14 there were e-mails. Mr. Shutzer said in his letter that the structure was appealed for non-use as such until the 1/20/15 meeting. There seemed to be more questions that it was appealed at the last meeting. There was a 180 degree on that that the building had not been abandoned. Continued to tonight's meeting. John Bailey letter doesn't say when the property was stored there. He doesn't think Bailey's letter is persuasive. He read from the Elwood letter referring to the \$50 per month rent. This suggests that Elwood paid rent just to store property there. Rent receipt of motorcycle storage until 2010. Mr. Doherty is "just saying" that the letters are not very specific. Not the kind of evidence you would expect when you consider what the Board is looking for. There was a 180 degree turn Mr. Toomey said at the last meeting he did not read the letter, he just signed it.

Mrs. Hartman's statement: Dan Doherty is not even sure if the only use of the property, that Mr. Shutzer's memo referencing prior research on Bartle vs. Lakeville evidence, protected use purposes. Use was a garage, not a single family home. He is not even sure if he agrees with protected use which can only exist if it is attached to single family use. That is not the case. He really struggled and read the memos Mr. Shutzer submitted. Mr. Doherty told Mr. Shutzer he doesn't want Mr. Shutzer to spend a lot of time on this. Mr. Shutzer: He did not think 2.2.7.4 applies. He changed his position to agree with Dan Doherty's position which provided him with a direction which he had not considered previously. Mr. Shutzer doesn't know the problem. He doesn't know the people who supplied written statements. Board member Doherty: Mr. Toomey did not say the building was in use. Attorney Shutzer and Board member D. Doherty disagree on the issue. Mr. Doherty is not putting blame on anyone here.

Board member Doug Dubin: As far as abandonment goes, he has one of his old cars stored in neighbor's garage. No one is going in or out; people do go in and out. He doesn't think the garage was abandoned.

Board member Hause: Does think the spirit of the bylaw.....thinks the quality of the evidence presented is not as strong as he would like to see. He understands Mr. Doherty's issue regarding abandonment but he has not come to a conclusion.

Board member Andy Rose: He can't understand why he got for a single family home in a single family. The garage was there which has been used as a garage. He just can't understand, he thinks it was used, even if not every single day. It is underlying premise that because he had a

garage there he can't put a single family home there. Doug Dubin totally agrees with what Andy says.

Attorney Shutzer: 2.2.7.4 does not apply, if you want to rebuild it under 2.2.7.5 it has to be a conforming structure. Andy Rose: Just doesn't think it passes the common sense test. If they win, they have to comply.

Board member T. Paprocki: Agrees with Andy and Don Hause.

Don Hause: Agrees with Andy Rose. It is counter-intuitive; he is willing to let it slide because it just doesn't seem right. Don Hause: agrees with Andy's concept even though the evidence was not strong. Andy Rose: It could be in that black hole, don't know whether we are there or not. Attorney Shutzer: The Board is 4 to 1; he just wants direction for what direction Board wants him to take. Andy Rose: Have concerns about the narrowness of this position. Attorney Shutzer: A single family home is permitted at that location, it can't be anything else. Doug Dubin: There is plenty of space on the lot but it is hard to come out on the road.

Attorney Shutzer: Asked for sense of the Board re how to build:

Abutter Mrs. Hartman is concerned about excavating the site. Doug Dubin: There will be regulations around that. Andy Rose: It will take more than just one month. Neither Andy Rose nor Don Hause will be here in April. Petition continued to April 2015 ZBA meeting at request of Attorney Shutzer.

**Petition 15-01 (141 HUMPHREY ST)** Petition of Swampscott Restaurant Operator d/b/a Mission on the Bay for signs special permit for non-illuminated signage on south side (2'10" x 16') and west side (2'10" x 14') as indicated with blue and red lettering.

Representative from signage company presented the petition to the Board. Chairman Marc Kornitsky told the petitioner the signs should be black and gold, under signage regulation section 3.2.4.1 and have gold letters on black and have 1" perimeter around each sign. Signs have only one change to be consistent with bylaw and this is the one chance. If petitioner is looking for relief, comply with bylaw. You really got substantial relief, you are getting two signs, and you are entitled to one. My opinion is you would need relief for name change but it has to comply with the bylaws for lettering. No questions or comments from the Board or the audience. Board will be everyone but Doug Dubin. Chairman Kornitsky: Petition to be continued to next meeting. He has read prior decision on Red Rock signage and have a motion to change the name but combined with the bylaw requires another meeting. Motion to continue petition to 3/25/15 meeting unanimously approved.

Town Planner requested he get the decision and plans for the Red Rock and share with the ZBA.

**Petition 14-25 (49 GREENWOOD AVE)** Attorney Kenneth Shutzer presented the petition to the Board under 5.11.3.5 and requesting Board decision as to whether the unit exceeds 800 square

feet. Faia Engineering and Building Inspector Rich Baldacci coordinated details on petition application. Attorney Shutzer reviewed the bylaw and told the Board he thinks Board was relying on gross floor area. Mr. Shutzer said "gross floor area" appears 42 times in the bylaws but not in 5.11.3.5. He discussed with Town Planner Pete Kane who said gross floor area doesn't apply to this. Mr. Shutzer read from Town Planner Kane's note on gross floor area. Mr. Shutzer says Mass General Law refers to "livable" area. Faia did what Baldacci told him to do. Board member Don Huse: Don't want to spend an inordinate amount of time on this. Mr. Shutzer: Bylaw should be re-written. Chairman Kornitsky: said gross floor area excludes hallways. Board member Andy Rose: Totally disagrees. Now need to determine that this is an accessory apartment. Attorney Shutzer remarked "have gone beyond design standards. There is one gas connection, one water connection, one electric connection and one sewer connection. Owner has to live in one of the two units.

**Petition 15-2 (35 LINCOLN HOUSE AVENUE)** Petition of Andrea Cohen for dimensional special permit, special permit, site plan special permit, and dimensional variance to allow enlargement of existing garage and mudroom with exercise room above and construction of a new entry canopy at main entrance of house.

Attorney Robert McCann told the Board the plans have been updated and Town Planner comments were distributed to the Board. Mr. McCann said they have reduced the addition to less than 800 square feet, so no longer need Site Plan Special Permit and they don't have to go before the Planning Board.

They now have a site plan application due to the last change, redesign house by moving it back from street from 14' to 16' which makes it a special permit application. Because of density, petitioner is looking for special permit to expand garage and add 362 square feet to second floor. Additional space will be used to house cars and upstairs will have a bedroom area 372 square feet. This new plan has dormer with faceted corners. Graphic was distributed to the Board.

Ms. Shine of 32 Lincoln House Avenue was recognized and told the Board she has not been reached out to in any way. Ms. Cohen and Ms. Shine left the room briefly to familiarize Ms. Shine with details of petition.

Attorney McCann said two issues have been raised: A.) whether the building would obstruct her view and B.) concern about construction and whether it would be done before summer.

Public meeting closed. Chairman Kornitsky moved to approve the decision, seconded by Don Huse. Motion passed unanimously. Attorney McCann will draft decision for review and approval by Chairman Kornitsky.

ZBA members who signed the approval sheet: Chairman Kornitsky, Don Huse, Anthony Paprocki, Andy Rose, Doug Dubin.

**Petition 15-3 (352 HUMPHREY STREET)** Petition of Rita McNeil for use special permit to convert dental office to real estate office.

Rita McNeil's nephew Bart presented the petition to the Board. The Board discussed the possibility of mixed use for this property with two commercial units on first floor and two residential units on second floor.

Petition originally heard on 2/25, continued to 3/25 and to 4/29/15. Ms. McNeil submitted request to withdraw without prejudice on 4/29/15. Attorney K. Shutzer told the Board petitioner may reapply in the future and requested no application fee be paid, petitioner will pay advertising fee. Written request to withdraw petition received 3/25/15.

**Petition 15-5 (531 HUMPHREY STREET)** Petition of CCATT LLC for use special permit and site plan special permit to remove 6 antennas and replace 6 antennas at the same height and location on the existing wireless communication facility. The applicant proposes 12 lines of 7/8" coax cabling and 12 twin tower mounted amplifiers and equipment upgrades within the existing shelter.

Board approved petition on the condition that annual reports of frequency transmission be filed with the Town and a "modest fee" of \$200. be imposed if the annual report is not received each year.

**Petition 15-4 (224 SALEM STREET)** Petition of Italo Visco c/o LCB Senior Living for use special permit and site plan special permit for construct of assisted living residence on 3+ acre site, comprised of approximately 76,000 GSF in area, including 84 units (20 for memory care residents) with 64 parking spaces with access from Salem St for residents and visitors, from Sunbeam Lane for staff and deliveries, as well as rear emergency egress in rear.

Petition continued to be heard 3/18/15.

Meeting adjourned at 9:45 PM

Helen Kennedy  
ZBA Secretary