



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
DONALD HAUSE
ANTHONY PAPROCKI
HARRY PASS, ESQ.

ASSOCIATE MEMBERS

DOUGLAS DUBIN
ANDREW ROSE

SEPTEMBER 16, 2015 MEETING MINUTES

Time: 7:05– 10:15 pm

Location: Swampscott Senior Center, 200 Essex Street (rear)

Members Present: M. Kornitsky, D. Doherty, H. Pass, A. Paprocki, D. Hause, D. Dubin, A. Rose

Members Absent: none

Others Present: Pete Kane (Town Planner), Ken Shutzer (attorney), Richard Smith (architect), Scott Claussen (petitioner), William DiMento (attorney), Robert Carp (applicant), Yassine Elkouram (applicant), Michael Callahan (resident), William Quinn (resident), Stephanie Rae Sullivan (applicant), Marilyn Phillips (resident), Tim Lawrence (resident), Charles Delloiacono Jr (resident), Said Ahrabar (applicant), Michael Hoffman (applicant), Robert Bradley (resident), Jody McAllen (resident), Bob Saunders (resident), Mary McGinn (resident), John Hines (resident), Lynn Wise (resident), George Katz (resident), Elizabeth Delaney (resident), Bruce Male (resident)

Meeting called to order at 7:05 pm by Chair Marc Kornitsky.

MEETING MINUTES

The Board discussed the drafted minutes for December 17, 2014; February 25, 2015; June 8, 2015; July 17, 2015. D. Doherty made a motion to approve the minutes, seconded by M. Kornitsky and unanimously approved.

ZONING RELIEF PETITIONS

PETITION 12-38 AMENDMENT

205 BURRILL STREET

Application of SWAMPSCOTT FINE WINES, LLC dba RAILROAD LIQUORS seeking to amend decision of petition 12-38 to allow opening at 6am Monday through Saturday to sell coffee and special permit to use an LED light in the window that is 20 inches x 10 inches that reads "Open" when lit - 205 Burrill St.

Chair Kornitsky opened the hearing on the petition at 7:06p.

Robert Carp (owner of business) explained his petition. He is looking to open at 6am to take advantage of foot traffic by offering coffee, lottery, and prepackaged pastries. Board noted that the request for the sign was unnecessary because the Building Inspector had noted it conforms.

M. Kornitsky asked if any public comments - none.

Board was then constituted as: M. Kornitsky, D. Doherty, H. Pass, A. Paprocki, D. Dubin. Motion by D. Doherty to approve petition 12-38 request to amend by opening at 6am Monday through Saturday for coffee and breakfast items; seconded by H. Pass; unanimous.

Action – APPROVED

PETITION 15-11 AMENDMENT

20 OUTLOOK ROAD

Application of NATALIA SHCHERBINE seeking to amend decision on petition 15-11 for permit for accessory apartment with parking and requesting conditions to be lifted as property meets all criteria according to zoning bylaw - 20 Outlook Rd.

Opened at 7:10pm by M. Kornitsky

Yassine Elkouram (representing petitioner) stated that he was opposed to the two conditions in the original petition decision. He's installed an 8' x 1.5' barrier as a precaution to parking in driveway area so it won't damage the house. M. Kornitsky asked if there were photos to confirm the installation - applicant showed photos from his phone but said he could provide them in printed form. Attorney for the Clintons (the abutters) had printed photos - provided to Board.

M. Kornitsky confirmed that the petition is looking to remove the condition regarding the location of the parking. He said he wasn't sure this installation was alleviating all of the Board's concerns. Mr. Elkouram said the installation relates to the recorded concern of the abutting property owner.

Board discussed that the other concern related to the deteriorated state of the elements that were holding the parking area up. The barrier only succeeds in keeping vehicles going beyond the driveway. Mr. Elkouram pointed out that by allowing vehicles to park in the driveway, it'll keep cars off the street.

D. Dubin asked if he's fixed the post at the rear that's falling over - it hasn't been done yet.

Mr. Elkouram then addressed the condition regarding the occupants for the accessory apartment. He referenced the definition of "family" in the Zoning Bylaw - which allows up to four people living together not related by blood. M. Kornitsky said that it pertains to "within a unit" but the accessory apartment is separate. He said the Town Meeting vote relates to the condition that was applied in the decision. D. Doherty said that as an accessory apartment, it has to be family otherwise you'd be able to rent it out to anyone. A. Rose said that would be a two-family house then - not an accessory apartment.

D. Doherty pointed out that the restrictions have been set (parking specifically) was done so to limit the impact of the accessory apartment on the neighborhood.

M. Kornitsky opened to public comment. Neal Clinton (attorney for Clintons on Walker Rd) spoke on behalf of abutters. Said their concern is about safety, not about the accessory apartment. The side lot line is less than 10' - the stilted structure is within the required side setback. Said the abutters aren't against a parking solution on the property as long as it's safely done. There haven't always been cars parked in that area - at previous meeting, other abutters had stated that it had been unoccupied.

Mr. Elkouram asked why the existing house was an issue. M. Kornitsky pointed out that it was raised at the previous hearing based on structural and safety concerns. Mr. Elkouram asked what the “green space” is that’s been referred to. M. Kornitsky said that the condition was to remove a portion of the driveway and landscape that area. Mr. Elkouram said that it’s not true and that area hasn’t been a landscaped area.

Board constituted as five regular members. M. Kornitsky closed the public hearing at 7:35p. Board said they agree with M. Kornitsky that the conditions shouldn’t be removed. He offered the applicant the option to withdraw prior to vote.

Mr. Elkouram requested to withdraw. M. Kornitsky made motion to accept withdrawal without prejudice. H. Pass seconded and Board voted unanimously.

Action – WITHDRAWN WITOUT PREJUDICE

PETITION 15-24

324 ESSEX STREET

Application of STEPHANIE RAE SULLIVAN for use special permit, site plan special permit, dimensional variance, and special permit (parking and loading requirement reduction) to remove existing 1- story office building and construct new 2.5-story building with two commercial spaces on the first floor, four residential units above, and parking for six cars on the first floor - 324 Essex St.

Hearing opened at 7:40p.

The Petitioner explained how she came into owning the property - acquired through partnership that she then took over. She’s attempted to sell as well as rent it. No success. Building is falling apart. She determined the best route would be to redevelop the site. She said that this plan is “blessed” by the Planning Board.

Richard Smith (architect) then walked through the project site. The building dates back to at least to the 1920s and previously were the offices of Groom. The new building would be a mixed commercial/residential. Originally they looked to do residential only but Planning Board didn’t want to lose the commercial element. This new building would have two commercial spaces, interior parking for the residential units, and four residential units. It’s a narrow site that runs along the railroad.

They are looking for the use special permit, parking relief for commercial use, site plan special permit, and dimensional variance for lot coverage and rear and side yard setbacks.

Commercial space on either end would define the character. The outdoor space could be used for commercial spaces but that will be best defined when the users of the space are identified.

M. Kornitsky asked about a food use and need for a dumpster. Mr. Smith said that they’d have to come back. M. Kornitsky asked where customers will park. Ms. Sullivan pointed out that by removing one of the curb cuts from the previous site, there will be an additional space created on the street.

M. Kornitsky opened the hearing to public comment. Marilyn Phillips (owner of clock shop) said they have major concerns with the project. She said the reason the property has been sitting vacant it because applicant hasn’t been maintaining the building. She’s concerned where all the cars are going to go. She doesn’t feel there’s enough room on the street especially during a snow storm. She’s also concerned about the roof decks and the location to the

train. M. Kornitsky asked how it was with Groom and the mortgage company. Ms. Phillips said there was no issue but doesn't believe there were 40 people there. She feels that this will impact her business negatively. She also wanted to know why the new building was so high - the building is within the height limit.

Attorney DiMento was recognized (representing Charles Deloiacono at 12 DiLisio Rd). Main concern is that he doesn't want DiLisio Rd used for parking. He pointed out that there are variance requests but wanted to know where the hardship was that would allow granting the variance. Board discussed the parking needs - required spaces met for residence. Mr. DiMento said there would need to be an additional 10 spaces for the commercial. Mr. DiMento asked about the criteria for granting the variances. He doesn't believe there is hardship or uniqueness. He feels the project is detrimental to the area.

Tim Lawrence (329 Essex St) was recognized - concerned about parking (doesn't feel it's been explained clearly), traffic impact, doesn't believe the property value has actually gone down, concerned about his kids and impact to them, feels there will be more traffic on DiLisio, worried about impact on his property value. Pointed out that the police pull over people in this area a lot and there are a lot of near accidents.

Charles Delloiacono Jr (5 DiLisio Rd) was recognized - has lived there 12 years. After the change to Stetson/Essex intersection, there's still a problem there. When cars are parked in front of the subject building, can't split lane to turn left or go straight. Also concerned about what will happen with the parking.

Ms. Sullivan responded to the concerns. She said that during the meeting with the department heads, the Police Chief would have liked to remove on-street in front of the all-residential concept. She pointed out that the traffic impact under current plans would be less than the previous. Ms. Sullivan asked if there could be a condition to limit the types of uses for the commercial spaces.

H. Pass asked about the history or issue to rent out the space. He asked if they could have just rehabbed it and included parking. The Petitioner said it's not feasible to rehab due to level of problems and easier to rebuild. A. Rose agreed that it would be best to redevelop it. For parking, A. Rose pointed out that the previous building needed 25 spaces and this one only needs 16 spaces - previous didn't have parking. H. Pass asked about reducing the commercial space on first floor to then include more parking. A. Rose pointed out that due to the shape, it wouldn't be feasible.

M. Kornitsky closed hearing at 8:16p and constituted board as the five regular members. He wanted to discuss the variances. D. Doherty said he has a lot of concerns about the project and feels the plans seem great. Feels the parking issues are problematic. He was concerned about the parking garage door opening into the busy street - different situation than the Burrill St project. Doesn't feel they meet the requirements for a variance (no hardship met under the bylaw other than the shape). A. Rose pointed out that due to the limited depth of the lot, it makes it very difficult when you take into account setback requirements. M. Kornitsky was supportive of the application and glad they revised the plan based on the Planning Board's feedback. He understands D. Doherty's concerns, but said that if it remains as is and is rented out, it could create even more traffic than the proposed project. He's okay with the commercial space and parking but concerned about the residential space above that adds to the parking needs. Said that it's very rare for this Board to grant variances. Feels that it may be the case here to get the variance but that it could then be appealed and tied up in court. Thought that maybe revising the plans and reducing the amount of residential, it could gain more support. He would have to be a no vote because there's too much being asked for. R. Smith asked what variance is specifically problematic. M. Kornitsky said that because lot coverage is coming down, that should be fine. A. Rose stated that maybe if commercial spaces were pushed out so that additional tandem spaces could be added, maybe that would work. H. Pass said he likes the project but recommended a

withdrawal in order to revise the impact of the project on area. Thinks building is nice but may be a bit too large for the area and the street. D. Doherty said it would be helpful to see elevations of the proposed building compared to neighboring properties. D. Hause said that may be worth reducing bedroom count and see about adding in more off-street parking. A. Paprocki said his concern was that there should probably more parking for the residence units. Also wants to see the side yard setbacks met rather than a variance.

The Petitioner requested to withdraw without prejudice. Motion to accept made by H. Pass, D. Hause seconded, unanimously accepted.

Action – WITHDRAWN WITHOUT PREJUDICE

PETITION 15-25

638-646 HUMPHREY STREET

Application of MORANDO & COMPANY for use special permit for tenancy for professional business office of five employees with hours of operation of 7am-8pm Monday to Saturday and install sign on front of building that meets zoning bylaw requirements - 638-646 Humphrey St.

Jacqueline Morando was recognized. M. Kornitsky asked what the business was that's proposed - accounting firm. They are here because the land court decision on building requires special permit for all new businesses. M. Kornitsky pointed out the Fire Dept comments which applicant had the information for. Board said that would fall under Building Dept.

M. Kornitsky opened public comment. No comments.

Closed public session at 8:35p. Board was then constituted by the chair as M. Kornitsky, D. Doherty, H. Pass, A. Paprocki, and A. Rose. Motion was made by A. Paprocki to approve use special permit for accounting office for the hours as noted with five employees, seconded D. Doherty, unanimous approved.

Action – APPROVED

PETITION 15-29

29 PURITAN ROAD

Application of MICHELLE & MARC STRAGER for dimensional special permit, dimensional variance, site plan special permit and special permit (nonconforming use/structure) to add an addition to the rear of existing house and a lateral garage addition - 29 Puritan Rd.

Opened at 8:32p. William DiMento representing Petitioners was recognized and submitted a letter requesting withdrawal without prejudice. M. Kornitsky asked if anyone was present to speak in response to the request to withdraw; there were no comments.

D. Hause motioned to accept request to withdraw, seconded by H. Pass and unanimously accepted.

Action – WITHDRAWN WITHOUT PREJUDICE

PETITION 15-26

197 ESSEX STREET

Application of SAID AHRABAR and KHALED KHODR for use special permit to add a restaurant to property (Swampscott Pizza & Grill); add exterior seating and umbrellas to grass area in front; round sign and internally lit; with hours of operation Mon-Fri 6a-10p, Sat-Sun 7a-9p - 197 Essex St.

Opened at 8:36p with Mr. Ahrabar recognized who said they would like to open a restaurant at the property. It has had a restaurant in the past. They'd like to add outdoor seating. Property has restrooms available.

Opened to public comment - none.

Closed hearing at 8:38p. D. Dubin noted there's a lot of tables/chairs being requested. He feels that four is more reasonable. Four tables with four seats each (two on each side of entry sidewalk). Board was then constituted as D. Doherty, H. Pass, D. Hause, A. Rose and D. Dubin.

H. Pass made motion to approve use special permit to add a restaurant at the property called "Swampscott Pizza & Grill" with exterior seating of four tables with four chairs and umbrellas each, with hours of 6a-11p Sun-Sat, dumpster shared, bathroom access, fire alarm upgraded if needed, comply with DPW request for back flow, and outdoor dining per Planner's recommendation. D. Dubin seconded. Unanimously approved.

Action – APPROVED

PETITION 15-27

450 PARADISE ROAD

Application of 43ARC LLC / SCOTT CLAUSSEN for use special permit to allow for the sale of beer and wine for a Craft Beer Cellar store which sells craft beer, wine, and related merchandise. Signage will follow applicable bylaws - 450 Paradise Rd.

Hearing opened at 8:45pm; Mr. Claussen was recognized. He explained that he's looking to open a franchise of Craft Beer Cellar which started in Belmont. Discussed history of CBC. He's looking to sell craft beers from around the world but focus on New England brews. He plans to also sell unique wines and home brewing supplies. Looking to partner with other businesses for events. This store will be able to take advantage of the growing business and provide that to residents.

Opened to public comments. K. Shutzer (resident) asked where it will be going - in the old Girls Inc space.

Closed public comments. No board questions.

Board was constituted as M. Kornitsky, D. Doherty, H. Pass, A. Paprocki, and D. Dubin. Motion made by D. Dubin to approve the special permit to sell alcohol, seconded by H. Pass, unanimous approved.

Action – APPROVED

PETITION 15-28

15 LITTLE'S POINT ROAD

Application of MICHAEL HOFFMAN c/o SHUTZER, LAURION & ASSOCIATES for use special permit and special permit (parking and loading requirement reduction) to use the residence as a bed and breakfast establishment to accommodate not more than three rooms occupied by bed & breakfast guests where the owner of the establishment will reside. The bed and breakfast is intended for guests for intermittent visits. All parking for

residents and guests shall be off-street. There shall be no exterior form and architectural enlargements or modifications to the structure to accommodate the bed and breakfast - 15 Little's Point Road.

Opened hearing at 8:56p. Ken Shutzer (attorney for applicant) was recognized. Michael Hoffman (applicant) handed out an informational packet about the property. Mr. Shutzer pointed out the definition of a B&B in the zoning bylaw and the special permit allowance for the use type. He acknowledged letters of concern from abutters who feel it's a commercial use. Pointed out that this is a limited use allowed by special permit in the residential zones. Said that he met with Planner that based on the parking regulations, there needs to be one space for each bedroom and one space for an employee. The owner will be the operator and reside at building. Four spaces are then needed. Their plan shows five spaces - the fifth is a space currently used which has historically been used. It is within the right of way.

They looked to see if there are any other B&Bs in Swampscott. There was one granted in 2011 which allowed four bedrooms and signage which goes against the zoning bylaw definition - 72 Humphrey St. Mr. Shutzer pointed out that the town has no lodging except for the one existing B&B. All previous hotels and inns have been torn down or lost to fire. Also noted that while there are rooms being advertised through AirBnB, they are not permitted by the town. He brought up the parking concerns of the abutters - they meet the parking need with plan. Another concern was about the commercialization of the residential district but stated that Town Meeting approved B&Bs (limited) in the residential zones. The Health Dept noted that if there were meals served, kitchen requirements would apply. There will only be continental breakfast. The Fire Dept wanted fire and CO detectors which they will include (for safety and insurance). Other issue raised by DPW if there was additional parking that might impact drainage but there is no expansion of parking. The only difference from current situation is that there will be other people residing in the home with the homeowner on an intermittent basis - no changes to exterior building or property. He demonstrated how this B&B will be different - B&B will pick up ppl at airport and they will be allowed to use bikes on site. Responded to another concern in a letter that this will be a trend - responded that it's a big undertaking to run a B&B and not likely to be a "trend." He also noted that this neighborhood was home to Marian Court College which had a far larger impact on transient individuals and traffic than the B&B.

Opened public comments.

Robert Bradley (8 Little's Point Road) asked what exactly was applied for - it's a use special permit to operate a B&B. Asked if the owner would also be the employee - he would. There was then discussion about whether there was "function space" that would require parking spaces. Mr. Bradley asked if some of the functions from the applicant's other operations (yoga and clay classes) which would bring additional people at minimum the teacher. Mr. Hoffman said he's offering three bedrooms for international visitors for extended basis (mostly one to six months). He does not intend to offer any classes. A. Rose said that if any type of function happens there, they'd need more spaces. Mr. Shutzer pointed out they could condition the decision that no additional uses other than staying in the room. A. Rose feels there should be two additional spaces for "functional" interior area of home.

Jody McAllen (8 Little's Point Lane) asked who will control when cars come and go. She doesn't want cars coming at all times of the night. Pointed out that with advertising, there may be drive-bys of people wanting to see the place. She was also concerned about the car doors opening/closing and the noise. Concerned about neighbors based on son's past of nearly being taken by a stranger at a B&B.

Bob Saunders (32 Winshaw Rd) is concerned about the safety of their kids. They know each other and who's driving through neighborhood and concerned about people they don't know driving through.

M. Kornitsky pointed out that there's no definition of "intermittent" in the bylaw. Mr. Shutzer agreed and said they were hoping the Board would define and limit that in their decision. Mr. Shutzer then pointed out that with the college, there were intermittent students who the neighbors didn't know.

Mr. Shutzer said there's a list of people who were in support (6, 16, 17, 18 Little's Point Road and 2 Little's Point Lane).

Mr. Bradley responded to Marian Court College points. Said those people were students who were done and left neighborhood by end of day. It would have been easy to identify student due to enrollment. There was no traffic at 3p.

Mary McGinn (1 Little's Point Lane) said she was on Board of Trustees at college and gave some history about it. She's lived there for 63 years. Said that the only access for parking for subject property is off of Little's Point Lane. The lane is an unaccepted street. Also afraid of the additional people using the beach which they have deeded rights to. Acknowledges that when she has family visit, they have to park on Little's Point Road.

John Hines (3 Little's Point Lane) has been there since 1976. Bought there because the lane is a narrow, quiet street. Wants to see it kept that way. Feels that people will drive too fast for the road.

Lynn Wise (24 Little's Point Rd) said she's in favor of a B&B but says they can't control exactly who would stay there such as sex offenders. What would that mean for safety? Doesn't want strangers.

George Katz (11 Little's Point Rd) says that they are in support of change like the new home that was built nearby. Feels the nature of a business and rooming scenario is concerning because of turnover of people and proximity to his home. Concerned about people smoking. Wouldn't know who's coming and going. Feels this is the most exclusive neighborhood in Swampscott and North Shore and shouldn't be changed to a B&B.

Elizabeth Delaney (4 Little's Point Lane) said she had spoken with Mr. Hoffman. She's amenable to idea but concerned about parking. She said even former owners of subject property had parking issues. Concerned about cars backing out of driveway. Pointed out the lane is two-way and very narrow. Said that Marian Court was a nightmare because of speeders and expansion that had happened (when it went to four-year). Concerned about the private beach (Rocky Beach), doesn't want non-owners using that beach. Little's Point Lane doesn't have the big estates, it's made up of homes that supported the estates.

Mr. Saunders said that zoning bylaws probably aren't perfect. This area isn't appropriate for B&B. Maybe the zoning is wrong. Thinks they do fit but in certain areas.

Bruce Male (45 Little's Point Rd) agreed that Marian Court was a nightmare. Also said that he invested in the home because it's a neighborhood. He feels that's a group of neighbors that know one another. He didn't invest in a home where there would be a business/enterprise which he feels would destroy the neighborhood.

D. Doherty said that he doesn't feel this is a bed & breakfast. Based on intermittent definition, so there should be times where there are no guests. Also feels that length of stay should be a night or a few, not for 1-6 months. Doesn't think TM expected multi-month stays. Agrees that the neighborhood is unique and quiet. He thinks if it was more of a B&B, it should be on the main road like Captain Jack's.

D. Hause agrees this isn't an appropriate location for a B&B because it's a neighborhood and not a traditional B&B (long term stay). If they stay longer, they build relationships locally which would then bring more people than anticipated at the property.

H. Pass agreed. Feels that when TM approved it, it was to bring B&Bs to town but allows the ZBA the discretion where it's appropriate.

M. Kornitsky said that he's been to the master plan meetings where people say we need more housing and tourism. Commended Mr. Hoffman for at least going the legal route rather than just placing an ad for rent. He doesn't think that the definition allows for longer-term B&B. Feels that B&Bs would work well in town, but concerned with parking and length of stay.

A. Paprocki agreed it's needed in Swampscott but not the right location.

D. Dubin said it's a tight area with the streets. Felt if there was more space and shorter length of stay.

Mr. Shutzer responded that by housing people for longer term, there would be less turn over and you can have more control. They thought the Board and neighbors would prefer that idea. Said they are open to condition shorter term of stay. They met the parking need. They can't respond to the neighborhood concern that it can't be in their neighborhood.

Board said that even if it was a more traditional B&B, it still doesn't feel like it's an appropriate location. A. Rose feels there's a need for a couple additional parking spaces to alleviate concerns for neighbors.

Public hearing closed at 10:08p.

Mr. Shutzer requested to withdraw without prejudice. D. Doherty motioned to accept withdrawal, D. Hause seconded, unanimously accepted.

Action - WITHDRAWN WITHOUT PREJUDICE

Meeting closed at 10:15 pm.

S. Peter Kane
Town Planner / Energy Efficiency Manager