



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
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ANDREW ROSE

ASSOCIATE MEMBERS

HARRY PASS, ESQ.
HEATHER ROMAN

AUGUST 16, 2016 MEETING MINUTES

Time: 7:00 – 9:45 PM
Location: Swampscott Senior Center, 200 Essex Street (rear)
Members Present: M. Kornitsky, D. Doherty, A. Rose, A. Paprocki, B. Croft, H. Roman
Members Absent: H. Pass
Others Present: Pete Kane (Director of Community Development), Ken Shutzer (attorney), Jim Landergan (attorney), William DiMento (attorney), Denine Ribicandria (applicant), Patricia Cashman (applicant), Kim Beuttler (applicant), Bill Beuttler (applicant), Ricky Huang (applicant), Gene Negreli (applicant), John Aieta (attorney), David Kelly (engineer), Jim Dennis (resident), Christy Whitney (resident), Eddy Harris (resident), John Niakaros (resident), Phyllis Sagan (realtor), Peter Lake (attorney)

Meeting called to order at 7:04 PM by Chairman Kornitsky.

MEETING MINUTES

The Board reviewed the minutes from the July 20, 2016, hearing. There were no comments. On a motion by D. Doherty, the July minutes were unanimously approved.

ADMINISTRATIVE CHANGE TO FEE STRUCTURE

M. Kornitsky read a proposed change to the filing fee structure – “Any legally existing Swampscott business may file an application for a use special permit or sign special permit in connection with an expansion or relocation of the use to a different address, provided the proposed use is not on a residentially-zoned property, without paying any ZBA filing fees. There shall be no exemption from the advertising fee of \$50 per application. This filing fee exemption shall not apply to an application requesting any other zoning relief in addition to or other than the special permits set forth in the prior sentence, including a special permit for a new or additional use.”

M. Kornitsky explained the reason for the proposed fee exemption is to allow existing businesses in Swampscott who want to expand or relocate to another location in town to be relieved of the fee (to encourage businesses to stay in Swampscott).

MOTION : by M. Kornitsky to accept the change, unanimously approved.

ZONING RELIEF PETITIONS

PETITION 16-10 (326-330 PARADISE ROAD) : Application of CROWN POINTE CONDOMINIUM TRUST seeking at appeal of the determination of the Inspector of Buildings related to the issuance of the final Certificate of Use and Occupancy as it pertains to the installation of a “greenbelt” at Hanover Vinnin Square. Map 34, Lot 111. *Continued from the July hearing.*

Mr. Shutzer asked the Board to continue the hearing to the Sept 21 meeting.

MOTION : by M. Kornitsky to continue the hearing to the Sept 21 meeting, seconded by D. Doherty, unanimously agreed.

PETITION 16-15 (18 CONNELLY): Application of DENINE RIBICANDRIA seeking a use special permit to construct a new detached garage with dimensions of 32 feet by 48 feet. Map 9, Lot 510. *Continued from the June hearing.*

John Niakaros (representing Denine, contractor and engaged to Denine) stated that they are willing to reduce the size of the proposed garage but looking for larger than 24 feet.

Attorney James Landergan (representing abutters) stated that this is a residential area and a non-residential building being proposed. It’s huge and doesn’t look residential. He also pointed out that the applicant admitted they want to use the building for things that aren’t allowed in the Zoning Bylaws. They admitted that they were going to use it to store large trucks that they’ve been told they can’t store outside at the property. Mr. Landergan also pointed out that the applicant wants to use the structure to do cabinet work, and they have snowplows that need to be stored (may be an illegal snowplowing business). He asked how they can propose a structure that large and blocking the driveway.

Mr. Niakaros said that the arguments are technical. He wants to point out that Denine's (applicant) father lives next door and has had a business there for many years. He thinks that the notion that the building doesn’t belong there is ludicrous. He says everyone that plows for the town stores their trucks at their home. He said they’re looking for an additional 12 feet in depth; it will be 32 feet wide no matter what.

M. Kornitsky then read the minutes from June pointing out the issues that the Board had with the request and that they couldn’t approve the request. He then said that H. Pass and D. Dubin were present for that earlier hearing but are not present today. There are four members present that were at the original hearing and asked if the applicant wants to go through with a vote tonight or wait until the following month.

Ms. Varvounis asked how the Board can vote on a request if the Board doesn’t have the authority to grant the size. M. Kornitsky said that the question right now is whether to continue the hearing to next month.

MOTION : by M. Kornitsky to continue the hearing to September 21, seconded by D. Doherty, unanimously agreed.

PETITION 16-20 (96 & 96A PURITAN ROAD) : Application of C. PATRICIA CASHMAN seeking a special permit (nonconforming use/structure) and appeal of determination of the Inspector of Buildings to allow for two residential units at 96 Puritan Rd and three residential units at 96A Puritan Rd. Map 21, Lot 24. *Continued from the July hearing.*

M. Kornitsky stated that the hearing was continued from last month due to there being only four members. Five members are now present.

Mr. Shutzer opened by saying that the property at 96 Puritan Road has two structures. The owner was trying to list it for sale, but they had an issue with “how” to list the property. They have included previous ZBA decisions in the application to help explain the uses at the property. He noted there was a 1984 decision (which replaced the 1965 decision) that gave a use variance to the property. The decision in 1965 gave the use of professional use at the property. They provided medical services for residents throughout the area.

The 1984 decision stated that the 1965 decision demonstrates that the property can’t revert back to a single-family structure which is why it provided the variance. The structure is currently being utilized as three residential units in 96A and two residential units in 96 - been used that way since 1987. There have been various building permits granted to redo kitchens and bathrooms.

M. Kornitsky asked when the medical use ended. Mrs. Cashman said it was 1987. Mr. Shutzer said that the variance still holds even though the Zoning Bylaws no longer allow use variances. In 1984, a use variance was granted and Mr. Shutzer said that there’s nothing in the decision that says that the use variance would end and that Mrs. Cashman could still operate a professional office there. He said they are looking for a less, non-conforming use - from mixed use to residential use. The same use as it is now without any structural changes.

Mr. Shutzer then provided copies of the previous building permits (for both structures). He pointed out that if there was an issue with the request for the building permits in the past, the Building Inspector would have noted that it wasn’t in compliance with the use. He said the Building Dept has condoned the use of the property. He said the conversion from commercial to residential was essentially granted by the Building Dept.

Mr. Shutzer stated there had been upwards of 25 employees at the site when it was a medical office. The residential use they are looking for is a lesser use. Mr. Shutzer then provided a list of the tenants that have lived at the property since 1987. He said that they can’t sell the property because of the unclear “use” but there are buyers that want to purchase it. Mr. Shutzer said there’s no bank that would finance the purchase since the “use” is unclear.

Mr. Shutzer said the property has a nonconforming use due to the variance and they are looking for a lesser use under Section 2.2.7.0. They want to legitimize what’s been there since 1987.

M. Kornitsky said that he doesn’t see any case law or statutory law that a varied non-conforming use vs a non-conforming use that was grandfathered. Mr. Shutzer said that the 1965 decision gave a clause that if the use ended, it couldn’t be used that way any longer - but that the 1984 decision doesn’t have any such clause. M. Kornitsky said that he disagrees. There was extraordinary relief granted in 1965 and expanded in 1984. The use has been abandoned as of 1987. It’s been used as a multi-family property. M. Kornitsky then showed a listing of the assessor’s taxing code showing that it was two-family until the 1990s. Simply because the Building Department granted the permits, M. Kornitsky doesn’t believe that it means the Board should legitimize the use.

Mr. Shutzer pointed out that it was the first time he’s seen a Board member reference the assessor’s records. A. Rose said that he thinks the Building Inspectors, not out of malice, gave building permits that made it possible to convert it to five units when it shouldn’t have happened. He doesn’t think the Board should authorize the illegal conversions.

B. Croft asked if Mr. Shutzer believes that due to the use variance in 1984, does that mean the owner could have a professional use and residential above? Mr. Shutzer said yes. B. Croft said that the last legal use was medical use on first floor of both buildings. He said his view is that there are two options of single-family or the use variance granted in 1984. The Board then asked about the residential uses in the back building - Mr. Shutzer said that the 1965 decision allowed use of the first floor for medical office and that there were already residential units above (though not noted in the decision).

Mr. Shutzer admitted that the decisions didn't clarify the "mud" and whether Mr. Cashman would operate his medical facility for 200 years. Mr. Shutzer then asked if the relief being given was only for a portion of the building and then by oversight, the use of the entire structure's lacking specificity puts the request at risk?

Mr. Shutzer said the property was building in 1863. The Cashmans moved into the property in 1951. The building permits that were presented tonight were ones that Mrs. Cashman had - the Building Dept didn't even have them.

M. Kornitsky said that in the 1984 decision on page 4, it says the back building was specifically called out as a medical facility (not including of residential units). Mr. Shutzer said that the decisions focused on the medical use because it was putting a commercial use into the residential neighborhood.

B. Croft asked if Mr. Shutzer would agree that the residential use of the back building was not referenced in the 1984 decision. Mr. Shutzer agreed because it was a request for commercial use in a residential neighborhood. M. Kornitsky asked if Mr. Shutzer looked at the voter records to see if there were records of people living in the upper floors of the back building.

D. Doherty feels that it's hard to believe that the 1984 decision would have been silent on the residential use in the back building.

Mr. Shutzer said that what we have here is something unique - and in the 1984 decision said that it can't revert back to a single-family.

M. Kornitsky opened for public comment.

Eddy Harris (62 Sculpin Way) showed pictures of her property in relation to the subject property. She's lived there 11 years. When she moved there, she looked into the Cashman property which was listed as a single family. Shortly after moving in, she found that the Cashman property was being used by multiple tenants that were destructive and loud. She just put up with everything and figured the Town's listing as single family was wrong. She then saw that the property was being listed for sale as a multi-family. She's concerned that what's being asked to make it five legal dwellings from what's been five illegal dwellings. She's afraid that the town will do what Cashman's are asking and that it won't be owner-occupied. She's afraid her property value will go down.

Christy Whitney (90 Puritan Rd) said that she went in to the Building Dept to look into the property and that she could only find that the back building would be for medical use. She said the current tenant in the back building has blankets up instead of curtains - not what they want in the neighborhood. She doesn't want to see five units at the property that would be rented out and not improved.

Phyllis Sagan (realtor listing the property) asked if the Board has been in the two buildings (none of the members had). She said the units in back are very nice and that Mrs. Cashman is selective with who lives in them. She asked what will happen to the back building if the relief isn't granted - it'll be nothing?

Mr. Shutzer provided a signed sheet of nearby neighbors that said they have reviewed the petition and support the request (11 signatures). He then noted that the residents that spoke against the petition wanted to buy the property but couldn't come to an agreed price. Mr. Shutzer then submitted a letter from Ms. Harris that was written when she wanted to purchase the property from Mrs. Cashman.

Ms. Whitney said that her attorney during the purchase discussion with Mrs. Cashman advised her that it was important for the "use" of the property be made legal before she purchase it.

Peter Lake (representing Ms. Harris and Ms. Whitney) said that the negotiations were done in good faith. He said that his clients couldn't get the financing without the "use" being made clear for the property.

Mr. Shutzer asked if there was anything else that might help the Board. M. Kornitsky suggested that voter records over the years could be provided to demonstrate the residential use of the back building. He said voter records for 1983, 1982 would help demonstrate. He said the public library maintains the voter records.

M. Kornitsky said that at most, he thinks that they may be able to grant three residential units since the previous use, as stated by applicant, of three residential units could be grandfathered - as long as the two residential units at the back building are demonstrated. B. Croft said that they need the evidence to show that it was a multi-unit residential use prior to zoning that has been continuously used.

Jim Dennis (73 Monument Ave) said he lived in 2011 in one of the units and is interested in buying the property, living there, and renting the other units. He feels the lack of medical offices makes it less problematic. He feels that if the back building loses its use, it could fall into disrepair which the neighbors won't want.

Mr. Shutzer said there haven't been any structural changes or building permits that stated they were changing the use. He said he'd be glad to look into the voter records.

Ms. Whitney said that Mr. Dennis said that he listed all five units on Facebook and there were no improvements made to the property.

M. Kornitsky said he thinks that the hearing should be continued to allow for additional records to be presented to show the residential use of the back building (since the 1984 decision).

MOTION : by D. Doherty to continue to Sept 21, seconded by A. Rose. Unanimously approved.

PETITION 16-21 (88 ROCKLAND STREET) : Application of KIM BEUTTLER seeking a dimensional special permit to construct a new side deck to connect front and back decks. Map 2, Lot 80. *Continued from the July hearing.*

Mr. Shutzer is representing the applicant (Kim Beuttler). He distributed a print out of the property and radius. He then asked about starting the hearing from the beginning (not continuing from last month) now that there are five members and the request is for a dimensional variance.

Mr. Shutzer noted that the previous application was for a dimensional special permit. The applicant has amended the application for a dimensional variance. The property print out demonstrates the uniqueness of the property due to the abutting paper street and shape of the property. They are looking for a deck on the side to connect the front and rear decks. The applicant would prefer the dimensional variance rather than going through prescriptive rights to claim the abutting paper street to the center line.

They are looking for side yard setback with relation to the paper street.

They provided letters of support for record and photos.

Mr. Shutzer said the required setback is 7.5' and currently there is 8.5'. They are looking to reduce it to 1.5'.

The Board was constituted as B. Croft, A. Rose, A. Paprocki, D. Doherty, and M. Kornitksy.

Public hearing closed by motion of D. Croft, unanimous.

D. Doherty asked about the hardship - public hearing reopened.

Mr. Shutzer said the hardship is that they are trying to beautify the property and tie the decks together. The hardship is that they can't do that right now.

MOTION : by D. Doherty to approve the petition of Kim Beuttler for a dimensional variance to construct a new side deck to connect the front and back decks, seconded by B. Croft, unanimous.

PETITION 16-23 (435 PARADISE ROAD) : Application of GOURMET FUSION INC seeking a use special permit and other special permits (parking and loading requirements, signs) to operate a full service sit-down restaurant (68 seats) with alcohol and food service beyond 10pm in the former Cheeburger Cheeburger space.

John Aieta (representing Gourmet Fusion Inc) said this is the Vinnin Square plaza and the former space of the Cheeburger Cheeburger. They are looking for a use special permit to operate a restaurant with alcohol to be open beyond 10p and relief from parking/loading requirements and that signage is compliant. Cheeburger sought special permits (nearly the same as this application) back in 2013, and before them it was City Bar & Grill. They are seeking fewer seats and fewer staff than Cheeburger Cheeburger.

There are 348 parking stalls in the parking area.

They are proposing an Asian restaurant with full bar. They operate the Gourmet Garden across the street. There are no loading docks at the location - loading will be done at the back of the restaurant just as it was done in the past.

Eddy Harris (resident) stated she's in favor.

P. Kane noted that the Building Dept had found that the plans incorrectly stated NH building codes. Mr. Aieta said that it was an error and the plans to be submitted for construction will refer to MA building code.

B. Croft asked if it will be hibachi – Ricky Huang (applicant) said no.

MOTION : by A. Paprocki for the special permits (parking/loading, signs) and use special permit from 11am to 12am, with updating made to building code on the plans, seconded by B. Croft, unanimously approved.

PETITION 16-18 (500 PARADISE ROAD): Application of FIVE HUNDRED PARADISE CENTERCORP seeking a site plan special permit and special permit (landscaping/screening) to reconfigure the Citizens Bank parking lot and add a parking lot connection to 450 Paradise Road.

PETITION 16-19 (450 PARADISE ROAD): Application of CC SWAMPSCOTT LOT B5 LIMITED PARTNERSHIP seeking a use special permit, dimensional special permit, site plan special permit, and other special permits (nonconforming use/structure, signs, landscaping/screening) to redevelop the current Walgreens into four retail spaces and a drive-thru separating the structure from rest of mall building and reconfiguring front parking lot for inclusion of two drive-up ATMs.

Mr. DiMento (attorney for applicant) asked to combine the hearings of petitions 16-18 and 16-19 because they are interconnected. He said that the proposal here is the further improvement of the old Swampscott Mall. The old mall was bought by CenterCorp in 1991 and it's been transitioned into the mall that it is today. The mall has been a work in progress and shows what can happen when you have a local property owner. They keep their word and do what they say they're going to do. The property hasn't been subject to any zoning enforcement or violation.

David Kelly (engineer) walked through an aerial image of the two properties. 450 Paradise is where the mall is located, and 500 Paradise Rd is Citizens Bank. The mall parcel is 6.5 acres and bank property is 1 acre. He then showed the aerial image with the proposed changes. First they've changed the property line which will result in the bank property having about 1,000 sf less. The current Walgreens' building will be reduced in size to create a drive-thru and the remaining Walgreens portion made into four retail spaces that face the street. The main purpose is to create a multi-tenant space and drive thru. There will also be outside seating for the restaurant use as well as an additional outside seating in front of the existing Bertucci's. They would reconfigure the front parking lot to make it flow better and improve the pedestrian connectivity to Paradise Road. They will also create a vehicular connection between the two properties to reduce the amount of circulation directed through the main mall entrance. The walk-up ATM would be replaced by two drive-up ATMs (with designated lanes). Mr. Rose (CenterCorp) said that banks are replacing walk-up ATMs with drive-up ATMs. They would also continue the landscaped islands of the mid-parking lot into the front parking lot. There's a reduction of impervious area due to the new landscaping and restructured parking area. The stormwater management will be upgraded with new storm drains under current requirements. Enhanced pedestrian experience, enhanced landscaping, enhanced stormwater management.

M. Kornitsky asked about a speed table. They are proposing one for the pedestrian crossing at the new parking lot connecting between the two properties. M. Kornitsky asked about potentially doing a speed table at the pedestrian

crossing in front of the drive-thru exit. Mr. Rose suggested changing the materiality (serrated concrete) for the pedestrian crossing which M. Kornitsky thought was a good idea.

Mr. DiMento asked that the Board remove the requirement that all tenants/businesses need to seek a special permit. They would like the 2016 zoning bylaw to apply instead.

A. Paprocki said his only concern is with the area for the drive-up ATMs - maybe put them so they are in succession. Mr. Rose said they couldn't do that because they're for two different banks.

Mr. DiMento submitted updated plans based on the Planning Board meeting. They also provided an image demonstrating the changes to the main mall sign; it's the same size with reorienting the names so they won't need the separate pylon sign.

Public hearing closed by motion of M. Kornitsky, unanimous.

MOTION : by M. Kornitsky to approve the petitions of 16-18 and 16-19 for the relief sought according to the plans stamped Aug 16 and signage stamped Aug 16 with two separate decisions to be written and that the restriction from the 1991 decision that required different uses to get a special permit be removed from the property being acted on (parcels 17-10B and 17-9E), seconded by D. Doherty, unanimous.

PETITION 16-22 (82 PHILLIPS AVENUE): Application of ANDREW B. ROSE seeking a special permit (Section 5.3.0.0) to construct a second accessory structure (greenhouse) and reduce the side setback to 7 feet.

Mr. Rose said they bought the house in 2001. They currently have a shed on the property. They'd like to add a greenhouse which will be a second accessory structure which requires a special permit. He's spoken with the abutting property owner closest to the greenhouse and the neighbor is in support.

No questions from the Board.

Public hearing closed on motion by M. Kornitsky, unanimously.

MOTION : by M. Kornitsky to approve the second accessory structure pursuant to the plans submitted and site plan, seconded by D. Doherty, unanimously approved.

Meeting closed at 9:45 PM.

S. Peter Kane
Director of Community Development