



TOWN OF SWAMPSCOTT

ZONING BOARD OF APPEALS

ELIHU THOMSON ADMINISTRATION BUILDING
22 MONUMENT AVENUE, SWAMPSCOTT, MA 01907

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ASSOCIATE MEMBERS
HEATHER ROMAN

NOVEMBER 16, 2016 MEETING MINUTES

Time: 7:00PM – 10:05PM
Location: Swampscott Senior Center, 200 Essex Street (rear)
Members Present: M. Kornitsky, D. Doherty, A. Paprocki, B. Croft, H. Roman
Members Absent: A. Rose
Others Present: Ken Shutzer (attorney), Judith Golditch (resident), Christine Allison (resident), Robert McCann (attorney), John Seger (architect), Julia Mooradian (architect), Barry Allison (resident), Jason Holder (resident), Steve Roberts (resident), William DiMento (attorney), Manuel Bettencourt (Town Building Inspector), Bill Luster (petitioner), Fred Schultz (petitioner), Dan Glosband (resident), Stephanie Oesch (resident)

Meeting called to order at 7:00PM by Chairman Kornitsky.

MEETING MINUTES

The Board reviewed the minutes from the October 26, 2016 hearing. There were no comments. On a motion by D. Doherty, the September minutes were unanimously approved.

ZONING RELIEF PETITIONS

PETITION 16-32

51 LINCOLN HOUSE AVENUE

Application of PHILO T. and JOY R. PAPPAS seeking a dimensional special permit, site plan special permit (nonconforming use/structure), and special permit under the Bransford line to demolish an existing single family dwelling and build a new single-family dwelling with reduced rear yard setback on a non-conforming lot. Map 21, Lot 66.

Previous to the hearing date the representatives for petition 16-32 had filed a request for continuation. The petitioners representative, Attorney Bob McCann was present. Attorney McCann explained the petition had been in front of the Planning Board and that neighbors had voiced concerns. The petitioner, Attorney McCann's client is requesting a continuation to address these concerns.

MOTION : By B. Croft to grant a continuation, seconded by M. Kornitsky, unanimously approved.

Petition 16-32 is continued to the December 21st ZBA hearing.

PETITION 16-29

14 BAY VIEW DRIVE

Application of KENNETH SHUTZER o/b/o STEVEN P. BANKS seeking a special permit (nonconforming use/structure), dimensional special permit, and dimensional variance to rebuild a single-family residence replacing a structure destroyed by fire on a nonconforming lot. Map 20, Lot 141. *Continued from November meeting*

Attorney Kenneth Shutzer represented the petitioner Steven Banks who was not present.

Attorney Shutzer began by providing the Board with a supplemental map dated November 9th, which was a larger version of one the Board had. Attorney Shutzer stated the map had already been entered, but that Director of Community Development Peter Kane had asked him to provide larger ones to the Board at the hearing.

Attorney Shutzer stated that the Board is receiving a revised petition that had been refiled with the ZBA. The revised petition was done on a suggestion the petitioner seeks alternative relief.

Attorney Shutzer then stated that his client, petitioner Steven Banks, was not present at the hearing due to a previously planned family trip, Attorney Shutzer then brought a letter forward from Mr. Banks to the Board explaining his absence. M. Kornitsky noted that the letter explained the family trip was planned over a year in advance.

Attorney Shutzer then mentioned that he is also present with John Seger and Julia Mooradian from Seger Architects, who will be answering questions.

Attorney Shutzer began his presentation by mentioning that the he had heard concern from the neighbors over the original application and a scaled back version of the application is being filed as a courtesy to the neighbors and on a suggestion that the client seek additional relief.

Attorney Shutzer explained the original application was submitted September 30th, and then the revised application October 25th, and that the application in front of the Board is the most current. Attorney Shutzer mentioned that a portion of the attic is removed in the new plans, but that the architects will explain further.

Attorney Shutzer explained that Mr. Banks had spoken with some neighbors, and had scheduled a meeting with Mr. Allison (an abutter) to meet and discuss the revised plans.

M. Kornitsky asked when this meeting took place. Attorney Shutzer stated November 4th.

Attorney Shutzer mentioned that he believed Mr. Banks and the neighbors had made headway but that the letter from Mr. Allison and other neighbors was of the contrary.

Attorney Shutzer mentioned that he had also received comments from P. Kane (Director of Community Development) and will further discuss them with the Board.

Attorney Shutzer then presented to the Board plans from 2014 for the property.

M. Kornitsky stated that he has questions about the bylaw and construction done in 2014. M. Kornitsky asked if the gross floorplan in the 2014 plans is based on what was built or what was proposed to be built.

Attorney Shutzer explained the proposed addition from 2014 was built but that the deck was not covered at the time of the fire in 2016. Attorney Shutzer stated the deck did not count in the gross floor area measurements, and that the basement area was also not included.

Attorney Shutzer explained the Board received comments from P. Kane regarding plans filed October 25th, but that these comments were not available for the hearing October 26th. Attorney Shutzer then explained that these comments on the plans dated October 25th were not made available until November 8th. Attorney Shutzer stated that P. Kane mentioned the new proposal is a vast improvement because the plans were scaled back, but that there were some questions as well.

M. Kornitsky asked what plans Attorney Shutzer is referring too? Attorney Shutzer clarified that these comments were on the plans dated November 8th.

M. Kornitsky asked Attorney Shutzer about the plans for the addition of a second driveway at the residence. Attorney Shutzer stated that the applicant requested instead of tandem parking, spaces side by side. Attorney Shutzer stated that P. Kane had requested tandem parking.

M. Kornitsky then asked Attorney Shutzer to clarify the maps that the Board were looking at.

Attorney Shutzer explained the new maps take into account the reduction in attic space, but that the first and second floor calculations have stayed the same.

M. Kornitsky asked that in the Bylaw section 2.2.7.5, regarding reconstruction, the wording is “and provided the building is reconstructed, should be as great in volume and area as the original non-conforming structure, and further provided that reconstruction is as applicable, approved by the site plan special permit granting authority pursuant to section 5.4.0.0” M. Kornitsky then asked Attorney Shutzer his feelings on the bylaw, specifically when it says “when applicable and site plan special permit”.

Attorney Shutzer then explains that the bylaw states the reconstruction of a new home of 3,000 sf or above needs a site plan review, but that this proposed home is underneath that amount, and because it is under that amount a site plan review is not needed and the Planning Board does not need to approve the plans.

M. Kornitsky and Attorney Shutzer then discuss the specificities that trigger a site plan review for homes over 3,000 sf.

M. Kornitsky asked Attorney Shutzer if he thinks the applicants plans require a site plan review, Attorney Shutzer does not.

Attorney Shutzer than began his discussion of the comments provided by P. Kane regarding the plans.

Attorney Shutzer stated that they were asked for further specification, and that the new plans provided this. Attorney Shutzer continued to explain that in a letter to P. Kane, he outlined the changes that were made in the plans based on P. Kane’s suggestions. That the new maps show a cutback of the attic area. Attorney Shutzer stated that P. Kane responded saying that it sounds good. Attorney Shutzer then entered these emails for the record.

Julia Mooradian of Seger Architects then presented to the Board aerial and street view photos of the applicant’s property and the adjacent properties. Ms. Mooradian explained that these photos help show the style and size of the homes in the neighborhood. Ms. Mooradian then used photos of the original home, before it was destroyed, to highlight specific characteristics, such as the “Gambrel” roof and how the entrance to the home was close to the road. Next, Ms. Mooradian discussed the original floorplan using layout maps. Ms. Mooradia explained there was a proposed addition that was not built before the fire.

M. Kornitsky asked if there was ever a Certificate of Occupancy granted for the addition, both Ms. Mooradian and Attorney Shutzer did not know.

Ms. Mooradian then explained the changes to the property in the proposed plans using the proposed plot plans. These changes included pulling back from the setback in areas on the side of the home, and clarified these changes.

Ms. Mooradian then explained to the Board that at the basement elevation the setback is 54 feet, but to the overhang it is 49.5 feet. The previous setback Ms. Mooradian explains was 51.6 feet.

Ms. Mooradian mentioned that the maps also show the placement for the two proposed driveways and the slope on the left side (from the street) drops significantly after the space allotted and that tandem parking spaces would be difficult.

Ms. Mooradian then presented a map of the original house with the proposed home overlaid on top of it. The map shows that an original porch was closer to the abutter. Attorney Shutzer then mentioned that the new entry to the home will be in the front.

M. Kornitsky then asked for a comparison of the foundations.

Ms. Mooradian explained the first-floor overhang will be about the same amount, but that the home will shift back four feet. Ms. Mooradian then showed an overlay map of the first floor and the basement. Ms. Mooradian then presented a map showing the volume from the east side of the home and the front. Ms. Mooradian used this map to explain that the proposed house is being shifted slightly. Attorney Shutzer then mentioned that the lot coverage for the original home was 2,323 sf, and the proposed is 2,208 sf. Attorney Shutzer explained that the proposed home has been bumped out to make it more "square-er". This proposed bump out is adding 208 sf. Attorney Shutzer explained the footprint is smaller, but the volume is larger and this is why the applicant is seeking relief.

Ms. Mooradian then showed floorplans for the proposed home. Ms. Mooradian explained that the new home will have in the basement, area for storage and mechanical instruments. Ms. Mooradian then went on to explain the first-floor area and that there will be a dining room, half bath, a deck overhanging the basement, and 477 sf of livable space. Ms. Mooradian then moved on to the second floor explaining there will be a slightly less large deck overhanging, three bedrooms and a full bath. Ms. Mooradian finally explained the attic space. Ms. Mooradian shows that the attic space and the roof have been pulled back.

A. Paprocki then asked if there will be collared roof ties above the flat attic. Ms. Mooradian then used the map to them.

Ms. Mooradian then used a new map to show the new front entrance to the proposed home from Bay View Ave, then went on to use a different map to show the different views and elevations of the proposed home.

Ms. Mooradian then asked if there were any questions, which there were none.

Attorney Shutzer then stated that what the architects have tried to do is keep the proposed home current to the time period it was built in, 1915. Attorney Shutzer also stated that the applicant had heard from neighbors that they were hoping the home would fit the size, volume, and style of the neighborhood.

Attorney Shutzer mentioned that the proposed home will be set back farther than the original 8 feet from the road in the front. The proposed home will mirror the adjacent home and be set back 12 feet.

Attorney Shutzer then mentioned that the original home, he presumed was built close to the street due to the drop-off in the back of the property. He continued to explain that he did not believe that there was technology at the time the original home was built to build on such a steep grade. Attorney Shutzer continued to state that with the proposed entrance being in the front, it is important that there is space. He continued to explain that by moving the proposed home back to 12 feet, it makes the home, less non-conforming, as the bylaw calls for a 20-foot setback in the front, and the proposed home is going from the original 8 foot setback to 12 feet.

Attorney Shutzer then stated that in another decision made by the ZBA, that the home across the street from the banks is smaller in scale but constant in terms of sighting was rebuilt, and it is this home that the architects used as inspiration to make the house look like it had been in place for a very long time.

Attorney Shutzer then stated that a letter provided to the Board by neighbors had many incorrect statements in it.

Attorney Shutzer states that the letter uses the pre-2004 house to gauge distance, to which Attorney Shutzer stated their numbers are incorrect, and should have used the distances based on the 2014 decision.

Attorney Shutzer also stated that the letter stated that the proposed home is too big and that it will improperly impact the neighborhood. Attorney Shutzer stated that the Allison home (Mr. Allison sent the letter of concern from the neighbors) is much larger than the applicants proposed home. Attorney Shutzer stated that the Allison house is setback 12 feet (like the proposed new home), that the proposed home for his client is also smaller. Attorney Shutzer stated that if you are using the Allison home as an example of the neighborhood, then his client home is bigger than the original but still smaller than the Allison home.

Attorney Shutzer also explained that if his client was proposing to build the same home as the original then the client would not have had to go in front of the ZBA. But, Attorney Shutzer continued, because you can tear down homes and re-build on non-conforming lots, that's why his client had to file a petition and seek relief.

Attorney Shutzer reiterated that even though the home has shifted slightly, is slightly larger, and sits a little farther back, it still fits into the neighborhood. Attorney Shutzer continued to mention that the letter mentioned words such as air and space, instead of using view, which there is no bylaw rights for view.

Attorney Shutzer then explained the timeline of events after receiving the letter from the neighbors and his communication with the abutters attorney and P. Kane. Attorney Shutzer responded to a letter from Attorney Shutzer stating that the proposed home is too big and high. Attorney Shutzer to this reiterated that the Allison household is bigger. Attorney Shutzer mentioned that he also received a letter from Attorney McCann asking for certain concessions, that Attorney Shutzer stated his client could not meet. Attorney Shutzer also mentioned that in an email from Attorney McCann the word "view" was used.

M. Kornitsky asked if this was settlement talk and if Attorney Shutzer should stop. Attorney Shutzer mentioned that he did not believe so.

Attorney Shutzer began to state that his client had made the effort to work with the neighbors, M. Kornitsky reminded Attorney Shutzer that the ZBA decides on the merits of the application.

Attorney Shutzer mentioned that he is willing to apply for Section 6 in the reconstruction section in the Town Bylaws. Attorney Shutzer stated that he stands behind requesting relief from section six because the proposal conforms on a non-conforming lot, and that it is less non-conforming than the original home.

Attorney Shutzer then reiterated to the Board that the proposed home fits the criteria, and is a similar shape and fit with the neighborhood, and that his client has tried his hardest to make it work well for everyone. Attorney Shutzer continued that his client hired an architect to make sure the proposed home fit, and Attorney Shutzer thinks that they more than meet the criteria and are asking for the Board to grant them the permits they seek based on the new plans. Attorney Shutzer ended by stating all the reiterations done in the re-filed application make the proposed home smaller, and that they ask for the allowance of being able to rebuild.

M. Kornitsky then asked for Attorney Bob McCann's response, who was present in representation of an abutter.

Attorney McCann then began his presentation.

Attorney McCann stated that he has not asked the board for protection on “views” but offered a blanket statement that the neighborhood had accepted the views.

Attorney McCann stated that he is only recently involved in the case, and that he had sent an email to Attorney Shutzer as a friendly hello and that he would be attending the hearing on behalf of the abutters. Attorney McCann also mentioned that he had emailed Attorney Shutzer the neighborhood recommendations the morning of the hearing but did not receive a response. Attorney McCann stated that he did not try to say views are part of property rights.

Attorney McCann then stated that he is representing the Golditch family, whose home was also burnt down during the fire on July 3rd and whose side yard is being reduced. The Golditch’s are at 10 Bay View Drive. Attorney McCann mentioned that his clients had contacted Linda Paster and had gotten a hold of the recent application filed by the petitioners of 14 Bay View Road. Attorney McCann stated that the dates and applications that the clients received show past plans which shows a deck on the third floor. Attorney McCann stated that the plans his clients have are not as recent as the ones the Board have, and that the new ones were filed after the legal ad date. Attorney McCann then mentioned that he had spoken with Director of Community Development Peter Kane who had mentioned to Attorney McCann that the attic height had been dropped. Attorney McCann stated that he still believes there needs to be more measurements made, and that he had conveyed this to Mr. Kane who mentioned that what Attorney McCann explained made sense and that it should be brought up in front of the Board.

Attorney McCann then read the definition of gross floor area for the Board. Attorney McCann mentions that the definition included language that attics, more than 7.3 feet in height, measured to the rafters, should be included. Attorney McCann then explained there is no official definition of the term rafters by the Town, but that he used multiple sources to define what a rafter means.

Attorney McCann then stated that the language in the definition for calculated gross floor area means that the proposed attic should be added in, and that this extra square footage will mean the applicants will need to seek a site plan special permit, and that the current application in front of the Board should be thrown out.

M. Kornitsky then asked Attorney McCann for the definition of a rafter. Attorney McCann reiterated that there is no official Town definition of a rafter but that he used multiple sources to come up with a definition. M. Kornitsky also asked Attorney McCann if he had a question of the “intent”? Attorney McCann stated that he believes the intent of the bylaw is clear and that the intent of the plans have changed, that the intent of the building plans is to use the third-floor as a inhabitable space. Attorney McCann mentions the bylaw regulated amount of roof height needed to be considered inhabitable, and that the floor space should add to the overall square feet of the proposed home.

Attorney McCann then presented to the Board a document that was previously entered then withdrawn. The document was part of a building permit from 2014 for the property at 14 Bay View Drive. Attorney McCann stated that if building the proposed home of that size in that neighborhood, then it should go through Planning Board for recommendations before the Zoning Board makes their decisions.

Attorney McCann mentions that the document he presented to the Board from the 2014 building permit helps with the issue of figuring out the previous volume of the home. Attorney McCann showed the detailed architectural plans and the elevations to explain how to calculate the previous volume. Attorney McCann stated the plans were done by Aaron Udley and that the petitioners could ask him to run the volume on his architectural software. Attorney McCann explained that this will allow the petitioners to see which bylaws apply and which do not. Attorney McCann explains that

the proposed home is larger than before, and even larger if the attic is included, that the volume should be calculated from the previous building permit.

Attorney McCann suggests that the current application is defective and that it should ask for a site plan special permit, especially because of the attic, that the original application did not ask for the proper relief. Attorney McCann also brings up the issue of the third floor, and that there is a issue of a variance, not reconstruction or a rebuild. Attorney McCann mentions that the circumstances around a building reconstruction all homes can be rebuilt on the same foundation. Attorney McCann states that the applicants are proposing a reduction of the amount of front yard setback needed which calls for a variance. Attorney McCann mentions that the variance box is checked on the application but that there is no explanation, but the special permit box is check, which leads Attorney McCann to believe the petitioners do not believe the variance applies.

Attorney McCann stated that for the front yard setback, it should be granted if the petitioner and neighbors agree to it, but do not grant it on this application. Attorney McCann mentions that the Board needs to consider Article 1 of the Town Bylaw, subsection G. M. Kornitsky asked if the proposed home is moving further away from Attorney McCann's client. Attorney McCann explained that the home will be going from 15 feet away, to 12 feet. Attorney McCann also explained that if the Board is looking at granting a variance, they need to have specific criteria to receive it, and that there is a strict restraint by the Board to grant variances. Attorney McCann stated that the application does not have much in it in support of granting the variance, but can get a special permit to build if not approved.

M. Kornitsky asked if the opposite abutters received a variance, to which Attorney Shutzer stated no.

Attorney McCann then summarized that he does not believe the current application in front of the Board is complete, and that it does not ask for the proper relief. Attorney McCann mentions that he believes the calculations for volume should be done to give all involved a better understanding. Attorney McCann also believes that the proposed attic area, since the rafters are higher than 7.3 feet, should be included in the gross square foot count, and make it so the petitioners must go through a site plan review. Attorney McCann mentioned that the application should go through the right process with complete information for the Board to make the final decision. Attorney McCann ended his summary by stating that the application ought to be dismissed and go through the Planning Board.

M. Kornitsky then allowed Attorney Shutzer to respond.

Attorney Shutzer stated that he went through the plans and application with P. Kane over which kind of relief would be needed in the application, and that a site plan was never mentioned. M. Kornitsky responded that P. Kane is not the final say. Attorney Shutzer mentioned that he had never seen the Board take the definition that Attorney McCann had construed about including areas for gross square foot calculations. M. Kornitsky then stated that the language, Attorney McCann used is in the Bylaws and that this is the first time the language regarding rafters had been raised, and that the questions this raises need to be considered. Attorney Shutzer also mentioned that the roof was never lowered and that it has always been the same, and the new plans were done with information from the previous plans. Attorney Shutzer stated that if the definition Attorney McCann brought up involving rafters meant that the petitioners needed a site plan, then Attorney Shutzer's client would have done it. Attorney Shutzer explained that the Board would be supplied with the same information if the site plan box had been checked, but that you do not ask for relief that is not needed. Attorney Shutzer also mentioned that there is an issue regarding less relief than what is needed. Attorney Shutzer mentioned that the previous home was built in 1915 and was made less non-conforming, but that you would not rebuild the home with the original rules. Attorney Shutzer also mentioned that the sideline setback is 7.5 feet and that there is no requirement for sideline setback and that the application does not need it. Attorney Shutzer stated that if

homes need to be built a certain amount apart so that fires do not jump, why not build every house 50-feet apart, and mentioned that he does not see the new house being built by the abutter being built further away.

Attorney Shutzer mentions that you can see from the volume that the house is bigger, but it is impossible with any certainty that the volume of the previous home was not greater. B. Croft asked if the architects for the petitioner had reviewed the building permit drawings and if calculations had been done using those? The architects replied that they did, and Attorney Shutzer replied that number is in the application. M. Kornitsky mentioned that the number in the application is gross square feet, and Attorney Shutzer mentioned volume is not specified in the Bylaws.

B. Croft mentioned that there was a 215-foot difference from the original home compared to the proposed, B. Croft asked if this comparison was done for volume? Attorney Shutzer stated he did not believe the calculation was merited. Ms. Mooradian mentioned that the roof had always been 7.2 which was then mentioned to be in satisfaction of a habitable space. M. Kornitsky asked if the measurement had been done to the bottom of the collar ties, and asks if there are rafters in the proposed attic?

M. Kornitsky asks about bottom of collar ties, asks if rafters in proposed attic? Ms. Mooradian mentioned that she did not see the rafter language in the gross area bylaw. M. Kornitsky then read the definition from the bylaw to Ms. Mooradian, to which Ms. Mooradian mentioned her definition did not have that language. Ms. Mooradian then used the maps to show where the rafters were on the proposals, and showed the space was 7.3 and higher.

D. Doherty mentioned that by definition a rafter is sloped, so at what point do you measure along the rafters, as well as he believes Attorney McCann is right with his definition on the rafters.

M. Kornitsky then mentioned that there are collar ties on the third-floor and if rafter means structural support of the ceiling or just the piece underneath the roof.

A. Paprocki asks the amount of space between the collar ties, to which it is answered, there is two feet. A. Paprocki then mentioned that the height to the ceiling doesn't matter, because even if you take the ceiling away, you will still have collar ties every two feet.

Ms. Mooradian stated that even if measured to the rafters and calculated this amount and added it to the gross square footage, it would still be under 3000 sf. Ms. Mooradian mentioned that a rough calculation of the volume of the existing house is 33,000 sf³ and the new total for the proposed would be 41,000 sf³. Attorney Shutzer mentioned that they were unsure thought of the definition, and mentioned that when they had asked P. Kane about volume, P. Kane said the only thing to rely on was the square footage.

M. Kornitsky mentioned that the applicants have the calculations, but it needs to be decided on what to include in the calculations, and that there is some evidence of an estimated volume. Attorney McCann suggests that they perform a more accurate measurement, to which Attorney Shutzer stated that if the client was able to provide the needed information, than we would. M. Kornitsky states to the attorneys that they cannot point fingers on why they did not get the correct information.

Attorney Shutzer states that he disagrees with the definition brought up about rafters, and that everything the applicants had done, he had interpreted as correct. H. Roman asks what the square footage will be if go by the rafters? Ms. Mooradian mentioned that she did not know. H. Roman mentioned that it looks like less than half of the roof has rafters, so that it would not add enough square footage to make the proposal go over 3000 sf. B. Croft asked if going from the rafters or the collar ties, to which Ms. Mooradian states the rafters. H. Roman mentioned that it still looks like it would not be enough, to which Ms. Mooradian agreed.

M. Kornitsky then asked if Attorney McCann wanted to respond.

Attorney McCann stated that he does not try and construe the interpretations of the Bylaw. M. Kornitsky mentioned that there is not clear definition of rafters in the Bylaw, to which Attorney McCann mentioned that is nothing in the bylaw that mentions ceiling height, and mentions that he has given the literal interpretation of the bylaw. Attorney McCann stated that the definition for rafter was not in the bylaw so he found the definition in multiple books and all had the same definition. Attorney McCann then read the definition aloud to the Board and asked them to interpret it.

M. Kornitsky then mentioned that by definition you would never have an attic under 7.3 feet. To which Attorney McCann stated you could with a peaked roof.

Attorney McCann then moved on to the definition of volume, which Attorney McCann mentions is not defined in the bylaw, but is found in other places. Attorney McCann explained that the larger volume of them home is being caused by the casing of the proposed home being larger. Attorney McCann reiterated the issue with the proposed home being inappropriate for the neighborhood. Attorney McCann then used the document from the 2014 Building Permit and the proposed plans and stated that if you were to take into account the certain rooms in question on the third-floor of the proposed home, the home would be over 3,000 sf. Attorney McCann explains this conclusion is from his interpretation of the Bylaw and the original plan.

Ms. Mooradian responds that if the area with a ceiling height of 7.2 counted and was added up it would add 578 sf. M. Kornitsky asked Ms. Mooradian to clarify her calculations. Ms. Mooradian explained that adding up areas under 50% of the story height would bring the total square footage of the proposal to 2,997 sf. The Board then explained and clarified Ms. Mooradians measurements to Attorney McCann.

Attorney Shutzer explained that Mr. Banks originally had a living space with two bedrooms and a bathroom on the third floor and that's where the original measurements came from, but that those are not included anymore.

M. Kornitsky then stated that was time to hear from the abutters and opened the floor to them.

Barry Allison of 18 Bay View, a direct abutter was first. Mr. Allison began by mentioning his concerns with the proposed attic and issues with statements made about the letter the abutters provided. Mr. Allison state that while the letter was written by him and he attached the details he did not want it to be insinuated that it was his letter, that it was signed by multiple abutters.

M. Kornitsky explained that the Board was here to listen to specifics on the petition.

Mr. Allison continued to explain that he owns the building abutting the Banks property, the one previously brought up, but mentions that he did not build the building. Mr. Allison went on to explain that he did his best to interpret the Town Bylaws and what the petitioner's application would need. Mr. Allison believes that the references made in certain subsections of the bylaws previously stated, call for extra specifications that are needed. Mr. Allison continued to explain that the 2014 application had a 13 feet by 28 feet addition, and that he believed if it was done in the previous five years then it would need to be aggregated with a special permit. Mr. Allison explained that he believed they applicants would need a dimensional variance and that the 30% increase in the proposed home is coming from the proposed addition. Mr. Allison went on to further explain the abutters letter to P. Kane.

Mr. Allison mentioned his issue is with how the stories had been measured and calculated for the proposed project and how this relates to the application not being complete. M. Kornitsky explained that it was not included in the application because the applicant did not believe it counted.

Mr. Allison then asked Ms. Mooradian to clarify her measurements that she had given, which she did. Mr. Allison responded to her clarifications that you cannot just count the areas with a height of 7.2 but you can count from the floor area up to the wall. Mr. Allison explained that if this measurement is done the it would come out around 650 sf. Mr. Allison then approached the proposed and existing maps. Mr. Allison stated that the original plans had the home being smaller, and then asked Ms. Mooradian to clarify certain aspects of the plan.

Mr. Allison went on from here to explain that his interpretation of the existing and proposed home sizes. Mr. Allison explained the proposed home will be such a large increase that it will not represent the previous home, and the roofline will be completely different. M. Kornitsky stated to Mr. Allison that the comparison maps given by the applicant's architects is very helpful.

Attorney Shutzer stated that there was a site plan originally done by CLG Associates who created a matrix in 2014. Attorney Shutzer then explained that the matrix showed the building coverage is smaller, to which M. Kornitsky replied, smaller by that standard. Attorney Shutzer responded the survey was done by a licensed surveyor.

M. Kornitsky then asked Attorney McCann his thoughts on the claim for a dimensional variance. Attorney McCann mentioned that he agrees that if the applicant put a cover on the porch and had a setback of 9.3 it would not have needed a dimensional variance. But, Attorney McCann continues to explain that the applicant is doing more with the proposal, they are building on a different foundation. Attorney McCann stated that the applicant should not fall under the same rules as before because now the foundation has changed. Attorney Shutzer mentioned they are seeking a dimensional special permit due to these changes. Attorney Shutzer continued to mention that his client is being ask to be held at a higher standard because his house burnt down, rather than self-demolition. Attorney Shutzer continued to discuss the size of the proposed home and the current home of Mr. Allison. Attorney Shutzer stated they wish the new home to be consistent with the Allison home, and that it would be an improvement to move the door to the front of the home.

Attorney McCann then mentioned that he interpreted the Bylaw of reconstruction to mean rebuilding with a special permit, provided the reconstruction is only as great in volume or area as the original. To which Attorney Shutzer explained he is not using that interpretation. Attorney McCann then continued to state that since the proposal is greater in area and volume, then it is not a special permit any more, but a variance that the applicants would need to seek, which Attorney Shutzer did not think so. M. Kornitsky mentioned that reconstruction can be done without a special permit as it is in their right, but that if the proposed home is over 3,000 sf then it needs a site plan review, if it is not over, it does not need one. M. Kornitsky stated that he interprets the bylaws the way they were written.

M. Kornitsky then asked for more abutters comments.

Jason Holder, 11 Bay View, mentioned that his name is on the abutter letter of concern and reiterated the letter is based off of six families concerns. Mr. Holder then approached the maps to explain his concerns. Mr. Holder stated that he was told the proposed home will be smaller, but that it is bigger, and that because it is larger, it has moved closer to 10 Bay View. Mr. Holder also stated that the roofline will be higher, and continued to quote comments from P. Kane from a response on October 21st. Mr. Holder mentioned that P. Kane said the existing mean grade seems correct, to which M. Kornitsky stated P. Kane wrote in his comments that it is correct.

The Board and Mr. Holder continued to discuss the comments and plans. Mr. Holder mentioned that the proposed third-floor could lead to a devaluation in his home.

Next abutter to speak was Iva Holder, who asked Attorney Shutzer if by moving the house back it is still nonconforming, what does moving the home back to 12 feet back from the front do? M. Kornitsky explained that moving the home back

to 12 feet from 8 feet makes it less-nonconforming, but that the setback bylaw states need 20 feet. Ms. Holder then brought up concerns about her view, and how the proposed construction will affect it. Attorney Shutzer stated that if the home was moved back to 20-feet then there would be a much larger issue than views.

Steve Roberts, 2 Bay View was next to voice his concern. Mr. Roberts asked what the height is going to be from the attic floor to the bottom of the ridge, from the main structure that is carrying the ceiling ties. Ms. Mooradian mentioned that she does not have the calculations, but that from the ground to the roof it is 35 feet. Mr. Roberts stated that the architects should have these certain measurements and numbers, and asked for more numbers on the proposed maps.

Judith Golditch, 10 Bay View then voiced her concern. Ms. Golditch asked if there will be two driveways, and Ms. Mooradian explained that there would be. Ms. Golditch then asked if the porch was not there would they be able to fit two cars? Ms. Mooradian stated that there is a very steep grade and cannot go further, Ms. Golditch mentioned that the family used to fit two cars in the driveway in question. Ms. Mooradian mentioned that according to the bylaw, parking spaces are 18 feet, and explained the work to make the driveway tandem.

Ms. Golditch continued to voice her concern that the home will be moving closer to her home and that this brings up an issue of safety and privacy. Ms. Golditch also mentioned the home will knock out her natural light, because the proposed home will be projecting up so high. Ms. Golditch stated she did not want the home 2-and-a-half feet closer to her home. Ms. Golditch also reiterated the recommendation that the 2014 documents and maps for the property need to be taken into consideration,

M. Kornitsky asked for any more abutter concerns, which there was none, and then asked the Board for questions.

M. Kornitsky began by asking D. Doherty what his thoughts were on triggering a dimensional variance, and if there is enough information for one to be triggered.

D. Doherty brings up the issue of the rafters, and explained building height is measured to the main D. Doherty assumed it was measured to the top plate of the top floor. D. Doherty then reiterated that there was no definition of rafters in the Town Bylaws, but believes rafters has a specific meaning and that he believes Attorney McCann's definition is correct, and that the measurement should be done at the lowest point of the rafter. M. Kornitsky asked where to measure if it is sloped, D. Doherty explained that in most cases the rafter would correspond with the horizontal structure which the ceiling is attached too. D. Doherty also mentioned that he accepts the applicants' dimensions in terms of the top floor, but does not believe it needs a site plan review, he mentions the benefits of the Planning Board, but that he does not think this proposal needs to go. D. Doherty also explained that he is still a little undecided if it needs a variance. He explained that the it could meet criteria for a variance, but thinks many of the houses with the drop-off, such as 14 Bay View are limited due to topography.

M. Kornitsky asked the Board if there are any more questions, then stated that he believed it was still too close to get to vote, and notes the compelling arguments from both sides.

A. Paprocki mentioned that he is hung up on the area, mentions that the calculations on the area with a 7.2 foot ceiling would add an amount that would make the total square-footage so close to 3,000 sf, he would like to see the space correctly measured. M. Kornitsky clarified that this would only need to be done if it applied, and then asked if A. Paprocki needed any more information. A. Paprocki stated that he wants more information regarding measurements.

Attorney Shutzer stated that if measurements are the sole issue of granting certification, then the client can provide certain measurement, and if the measurement is greater, then the client will refile for the additional relief, which Attorney Shutzer believes will alleviate the need to continue and come back next month. Attorney Shutzer stated there

could be a condition in the permit that nothing will be granted until the Board receives certified measurements that the proposal is smaller.

Attorney McCann stated that is an issue of site plan special permit being required, and if the attic constitutes a story or a story-and-a-half? Attorney McCann believes that they deserve to understand the mass provide by volumetric calculations. Attorney McCann does not think a vote granted with a condition of calculation being provided, is correct.

M. Kornitsky clarified that this the home is bigger than it would need a site plan review. To which Attorney McCann responded that if the home is bigger and needs a site plan review, then the application must be refiled, and mentions his understanding of the critical timing.

Attorney Shutzer asked that volume be taken off of the table because it was not in the application. To which M. Kornitsky explained he does not think he can. Attorney Shutzer stated that they are not looking for volume by right. Attorney Shutzer and the Board discuss the acts of self-demolition and unforeseen events and what the Bylaw outlines.

Attorney McCann mentioned that he has not suggesting that someone whose house burnt down be held at a higher criteria, but that the applicant has not met their burden, to which Attorney Shutzer stated the client has.

Stephanie Oesch, 6 Bay View then asked if the 5-year lookback applies from 2014? M. Kornitsky responded that this is still an open question, and mentioned that there are many legal questions that still exist due too this unique situation. Attorney Shutzer and M. Kornitsky discuss the five-year lookback. M. Kornitsky then asked the Board if they are ready to vote, but then stated that when one member wants more information he feels inclined to continue, which the Board agrees.

M. Kornitsky asked if there is something to be done to get a more reliable previous size estimate, and that this is needed to vote and determine if a site plan special permit is necessary.

M. Kornitsky then makes a motion to continue, but Attorney Shutzer mentions that if the home is over 3,000 sf then the application will be amended and refiled, to which M. Kornitsky agreed. Attorney Shutzer stated will re-advertise or come back with more information.

MOTION : By D. Doherty to continue the hearing to December 21st, 2016, unanimously approved.

PETITION 16-33

71 KING STREET

Application of LORA LEE PIKE seeking a dimensional special permit, site plan special permit, and special permit (nonconforming use/structure) to add a two-story addition with garage underneath to existing single-family residence nonconforming structure. Map 2, Lot 76.

Attorney William DiMento is present and representing the applicant Ms. Pike, who is not present. Attorney DiMento then begins his own recording of the hearing, which M. Kornitsky agrees too.

Attorney DiMento states that Doug Burns is the contractor on the project, and Richard Ness is the architect, both of whom are not there.

Attorney DiMento mentioned there was a question regarding a landscape plan. Mr. DiMento then presented a large landscape plan, and began his presentation. Mr. DiMento explained that there is a small house on a small lot, on one of

the oldest streets in Swampscott. Mr. DiMento continued to explain that the applicant is seeking to build a garage with a small addition of 900 sf above the garage. The home will go from 1,485 sf to 2,385 sf after the addition is complete. Mr. DiMento continued to explain that the lot is very steep where the proposed garage is and that a car of the previous owner had slid down the driveway. Attorney DiMento stated that Ms. Pike wants to be able to pull into a garage during storms.

Attorney DiMento stated the applicant is seeking a dimensional special permit in the back yard as it is going from a setback of 20.6 feet to 18.1 feet, and that the current lot is 4,654 sf in a 10,000 sf district. Attorney DiMento explained the addition meets all other setbacks, and the other existing setbacks will not change. Attorney DiMento then showed a picture of an aerial view of the locus, and that the home will meet the uniform of the neighborhood. Attorney DiMento explained the owner had circulated the plans and has letter from the abutters that they have seen and like the plans. Attorney DiMento then provided a letter from the abutters and a locus of which houses signed the letter. Attorney DiMento explained the immediate adjacent home, which was increased in size five-years ago is rented so they do not have a signature. Attorney DiMento asked if there were any more questions. M. Kornitsky asked if there were any abutters present who wished to speak, there were none.

There were no further questions from the Board.

MOTION : By B. Croft to approve the dimensional special permit and site plan special permit to add an addition and garage underneath, and to reduce the rear yard setback from 20.6 feet to 18.1 feet, A. Paprocki seconded, unanimously approved.

PETITION 16-34

16, 18, 20 ATLANTIC CROSSING

M. Kornitsky begins by noting that Town Building Inspector Manny Bettencourt is present.

VERSACON LLC. the applicant is seeking an appeal of the determination of the Inspector of Buildings regarding the location of bulkheads with setback requirements.

The Applicants are seeking an appeal of the finding by the current Inspector of Buildings, based on their previous positive finding by the previous Swampscott Inspector of Buildings.

Fred Schultz the contractor and Bill Luster representing Atlantic Crossing LLC. are present.

Mr. Schultz began by explaining that their appeal revolves around their project being between two Building Inspectors. Their issue is that they are building 14 homes, and 11 are done, but that the final three are primary issue due to different interpretations of the Bylaw by different Building Inspectors. M. Bettencourt explained that the bulkheads are an intrusion into the setback, but the applicants want to continue under the same interpretation they began with.

M. Kornitsky asked if the plans were originally approved by the Planning Board, which Mr. Schultz replied they were. Then M. Kornitsky asked for the plans that were approved.

Mr. Luster mentioned that they did not have the plans with them that were originally approved. M. Kornitsky then asked M. Bettencourt then if he had seen the originally approved plans. M. Bettencourt did not believe the plans showed the bulkheads, and that the ones approved had the foundation shown. M. Bettencourt continued to explain the bulkheads extend five-feet off of the foundation. M. Kornitsky asked, that if M. Bettencourt's decision was upheld, would the

applicants need to refile for a dimensional special permit. M. Bettencourt responded that yes, they would. Mr. Luster commented that he was unsure if they needed to file for an appeal or a dimensional special permit, and that initially they had asked for an appeal because it was the shortest route. Mr. Schultz stated that the homes are already built, and that when the as-built maps were presented the questions regarding the bulkheads were posed.

B. Croft asked how much over five-feet are the bulkheads, to which M. Bettencourt replied they are generally around half-a-foot, and that the issue is they are projecting over the five-feet. Mr. Luster stated that this is a small development and that they are supposed to sit right on the setbacks.

B. Croft then explained the Bylaw language regarding this issue and that the issue is the bulkheads should not extend over five feet. To which M. Bettencourt replied that because the bulkheads extend over five-feet they have become a part of the house and require a setback. Mr. Luster explained that they relied on the original Building Inspector's interpretation of the ordinance and also thought there was some opportunity in the wording to allow it. M. Kornitsky asked about the setback and each lot, M. Bettencourt then replied that each home violates the setback in different way, Mr. Schultz then mentioned the shape of the development.

Mr. Luster explained that lots 16, 18, and 20 face in towards the development. M. Bettencourt and Mr. Luster then discussed the definitions of the side and front yard setbacks in the Bylaw in accordance with the development. B. Croft then asked if M. Bettencourt is distinguishing bulkheads from chimney eaves because it has a cover. M. Bettencourt replied, yes, because he thinks of the bulkheads as an enclosed staircase. Mr. Schultz responded that the bulkheads are just a door covering the stairway, which M. Bettencourt replied is covering the stairway acting as a roof.

B. Croft asked M. Bettencourt to explain his concerns. Mr. Luster and M. Bettencourt and B. Croft discuss the issue revolving around allowing a bulkhead that protrudes and if there is a possibility to build a "dog house" style door? B. Croft then asked if the overall issue was over the definition of a bulkhead? Mr. Luster explained that they would be happy to restrict the bulkheads to remain bulkheads, but the dog style would not work. M. Kornitsky mentioned the issue is on how to restrict the bulkheads to staying only bulkheads. B. Croft asked if there is a possible way to scale back the bulkheads, to which Mr. Luster replied two are already constructed and in place. Mr. Luster continued to mention that making them smaller brings in the issue of height and the steps steepness.

M. Kornitsky then asked if there were any abutters present on the matter.

Dan Glosband, 34 Atlantic Ave, said his property abuts to lot 20. Mr. Glosband brought with him pictures that show the property and the lots in question. Mr. Glosband continued to explain that the bulkheads are very close to the carriage house on his property. Discussion was then had on the measurements of the property lines and the pictures presented by Mr. Glosband were used.

Mr. Glosband stated that he understood there was supposed to be a 10-foot setback and a screening of evergreens between the development and his property. Mr. Glosband also mentioned that his issue is with how close the bulkhead is to his property. M. Bettencourt explained how the final inspections of the project are done. Mr. Glosband mentioned that when the plans were approved they were approved with the landscape plan including the evergreens. Mr. Luster mentioned that they had stopped planting the evergreens where the construction was taking place and hoped to put a fence in certain areas rather than evergreens. M. Kornitsky stated a fence would mean that the relief sought would change. Mr. Glosband then brought up his issue with the proposed deck, to which M. Bettencourt and the applicants stated were within their right.

B. Croft asked if the basement access could be considered a side stair case? M. Bettencourt explained that is might be able to if a four-foot stem wall was put in and the stairway was sideways, then it could be in compliance. Mr. Schultz stated that this would cause more work and the impracticality of opening the doors against the home.

M. Kornitsky asked when the relief was granted by the Planning Board, to which Mr. Luster explained they did not know that they needed to seek relief. Mr. Luster explained they presented a package off the plans and that this was approved at the Planning Board.

The Board then reread the bylaws and discussed. Section 2.3.8.2 was brought up to be in concern as well.

D. Doherty mentions that he believes the bulkheads to be a light projection, not an unenclosed step, but a light projection. D. Doherty mentioned that he believes the section on light projections applies to bulkheads, to which M. Kornitsky agrees, and mentioned that if the applicants are looking for relief it would be with a dimensional special permit. D. Doherty and the Board then discussed the relief that the applicants can seek. M. Kornitsky asked if a dimensional special permit can be granted, and if it is possible to grant one for the side yard encroachment as well, which M. Kornitsky explained is in the same section. M. Kornitsky and A. Paprocki then discussed the appropriate permits that need to be sought by the applicants. The Board then discussed section 2.3.6.5 of the Bylaw and was curious about if there is a limitation this section describes. D. Doherty explained that 2.3.6.5 does not mention that the projection be no closer than five feet, but that it says need not apply with added regulations, which D. Doherty thought it meant it doesn't allow less than five feet. D. Doherty mentions that he does not think you can give a dimensional special permit.

B. Croft then mentions certain language from the bylaw which the Board discusses, M. Kornitsky mentions that the language is unique. D. Doherty reiterates that he does not believe a projection can go beyond 5 feet, and M. Kornitsky agrees that a dimensional special permit cannot be given, even though the bulkheads are not in the front.

M. Kornitsky mentioned that he believes it is squarely an argument over that the development was permitted by one Building Inspector and the applicants are appealing the new Building Inspectors interpretation. M. Kornitsky explained that this case could come into some zoning issues, and that unless the applicants get a decision, the Boards question to answer is if they should overturn the current Building Inspectors determination.

M. Kornitsky, D. Doherty, and A. Paprocki mention that they agree with M. Bettencourt's determination.

M. Kornitsky mentions that it looks like there might be five votes of upholding the decision, and that the applicants may need to comply. The applicants and M. Bettencourt then discussed possible solutions and what can be done. It is mentioned that two of the homes can be solved, and would not need to appeal the decision, and would make the bulkheads unenclosed staircases. A. Paprocki asked if a cover is needed for an unenclosed stair case, and M. Bettencourt replied yes, as it still projects from the staircase. M. Bettencourt then explained the different regulations for the different properties and what would need to be done. Mentioned that at lot 16 the bulkhead is not installed, and Mr. Luster mentioned that they could look for an opportunity in the design to fix it, but Mr. Schultz mentioned that cannot make a five-foot bulkhead. Mr. Schultz then asked how the bulkheads are considered part of the structure. M. Kornitsky explained the language and the Bylaw. Mr. Schultz then explained the previous Building Inspectors interpretation, and reiterated that the previous Building Inspector felt one way, and the current Building Inspector does not. Mr. Schultz then stated that they have two certificates of occupancy that show the bulkhead projections of over five feet, and less than five feet from the property line. Mr. Schultz then stated that if the Board agrees with M. Bettencourt then the applicants would have to go and change all the bulkheads, because the rules changed. M. Kornitsky clarified that the rules did not change, but that the interpretation did.

M. Kornitsky then asked for a site plan, Mr. Schultz explained they did not have one, but brought forth a lot plan, and used this to show where the bulkheads are located.

Mr. Glosband reiterated that he is concerned over the screening of the property. M. Kornitsky asked if the applicants would be open to continuing to work with the neighbors, and that if they continue to work with the abutters and come back before the Board then they might reconsider their thoughts on the interpretation. Mr. Luster mentioned that they will come back, but that they were not putting plantings in until the construction was over. Mr. Schultz mentioned that he would talk with the abutter about a fenced screen or an arborvitae screen, and Mr. Glosband mentioned he was happy to talk. M. Kornitsky asked if the applicants and abutter want to speak or have the Board vote? Mr. Schultz mentioned there were two other bulkheads to talk about, and Mr. Luster suggested maybe coming back next month and discussing all three lots. M. Kornitsky asked for a site plan if they come back, and D. Doherty would like to see some evidence of the previous Building Inspectors thoughts, that maybe the previous Building Inspector could come in person and discuss with the Board, or write a letter.

M. Kornitsky stated that their detriment stems from their reliance on the previous Building Inspectors interpretation. Mr. Luster agreed to a continuance.

MOTION : by D. Doherty to approve a request for continuance, A. Paprocki seconded, unanimously approved.

Meeting closed at 10:05PM.

Andrew Levin
Assistant Town Planner