



TOWN OF SWAMPSCOTT

ZONING BOARD OF APPEALS

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

MEMBERS
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HEATHER ROMAN
EMILY STUART

MARCH 28, 2017 MEETING MINUTES

Time: 7:07PM – 11:18M
Location: Swampscott Senior Center, 200 Essex Street (rear)
Members Present: M. Kornitsky, D. Doherty, A. Paprocki, A. Rose, B. Croft, H. Roman, R. Landen, E. Stuart
Members Absent: None
Others Present: Gary Finari (applicant representative), Rick Jakious (resident), George Wattendorf (resident), Nick Weinand (petitioner), Melissa Weinand (petitioner), Bill Peterson (architect), Paolina Lepore (petitioner), Giovanni Lepore (petitioner), Joe Dipetro (resident), Damon Seligson (attorney), Stuart Levine (resident), Chris Drucas (attorney), Marty Bloom (petitioner), Dana Robinson (engineer), Mia Plante Nunez (petitioner), David Haliotis (architect), Andrea Franklin (petitioner), Nicholas Paolucci (architect), Andrew Levin (Assistant Town Planner)

Chairman of the Board, M. Kornitsky, called the March 28th, 2017 Zoning Board of Appeals (ZBA) meeting to order at 7:07pm.

MEETING MINUTES

M. Kornitsky explained to the Board members present and audience that the first item on the agenda is to review previous meeting minutes.

M. Kornitsky stated that he had previously circulated proposed revision to the meeting minutes from October 26th, 2017, specifically regarding Petition 16-30 (57 Rockland Ave). M. Kornitsky explained that since the time of the last meeting of the ZBA, questions about the decision described in respect to the retaining wall being proposed.

M. Kornitsky explained that he had gone back and listened to the audio tape of the meeting, M. Kornitsky asked the other Board members if they had listened as well. M. Kornitsky explained that he has proposed 10 specific revisions to make to the minutes, and was going to make a motion to amend the minutes.

M. Kornitsky stated that he moves to amend the minutes from the October 26th, 2017 meeting to include the 10 specific revisions he has made.

M. Kornitsky then read through the 10 specific revisions he has made.

M. Kornitsky asked if there was any public comment with respect to the motion he has made. Rick Jakious of 49 Rockland Street, an abutter and resident stepped forward in front of the Board. Mr. Jakious stated that he understands this is not the typical procedure, and mentioned that he has a few questions. Mr. Jakious asked if it is the intention of the Board to change the decision for Petition 16-30 or to provide better clarity for that decision. M. Kornitsky explained that the Board is not looking to amend the decision, but amend the minutes of the meeting. Mr. Jakious asked if this meant the decision stands and the special permit is unchanged, M.

Kornitsky explained that he is making purely a motion to amend the meeting minutes, and nothing with the vote or decision. Mr. Jakious then stated, for the sake of clarity that he has some follow up questions.

Mr. Jakious asked M. Kornitsky about bullet point number nine on M. Kornitsky's revisions, a point regarding a proposed concrete segmental retaining wall. Mr. Jakious brings forth proposed plans, dated October 24th, 2016.

Mr. Jakious asked M. Kornitsky if the proposed wall he refers to in bullet nine is delineated as the dark grey area outlined on the plan. M. Kornitsky explained how he viewed and understood the plan. M. Kornitsky explained he understood it that the wall that outside wall (he showed this on the map) was at 77.5 and the interior wall was 81.5. M. Kornitsky then mentioned that he is unsure if the plan that Mr. Jakious had brought forward is the same one that he had reviewed. M. Kornitsky then stated that on the approved and stamped revised plan that he reviewed, in regards to bullet nine, M. Kornitsky mentioned this map showed the wall that is closest to Mr. Jakious property and wraps all the way around the outside is 77.5, and that the interior wall could be as high as 81.5.

Mr. Jakious explained that the special permit says that the wall needs to be drawn as shown and located on the plans. M. Kornitsky mentioned that he is unsure if the plan they are reviewing was part of the record, Mr. Jakious stated it is the October 24th revised plan. M. Kornitsky explained that the plan that was filed (stated it is labeled "proposed segmental concrete retaining wall"), showed the segmental retaining wall. Mr. Jakious then explained the wall as he understood, M. Kornitsky asked Mr. Jakious to clarify this and show the Board this on the plan. Mr. Jakious explained that as he understands the wall it starts at his property, on the West, and comes down roughly 20 feet, the wall turns and goes perpendicular from his property, approximately ten feet. Mr. Jakious continued that the wall turns and goes along the back property-line and slopes towards the middle and as it gets approx. 20 feet from the back property line, it follows parallel to the property line. M. Kornitsky then asked that Mr. Jakious use the plan to show this for the Board members.

D. Doherty asked M. Kornitsky what precipitated this request from M. Kornitsky to amend the minutes. M. Kornitsky explained there was a question from the building inspector regarding the decision and he petitioner building the wall that abuts Mr. Jakious property, and a question about the elevation that was permitted by the Boards decision. M. Kornitsky explained that he had gone back and listened to the audio of the hearing and believed that the minutes should be amended, rather the decision. M. Kornitsky stated that he had thought about possible amending the decision for petition 16-30, but ultimately decided on amending the minutes to add more background and depth. D. Doherty asked if the decision was consistent with the minutes. M. Kornitsky explained the minutes were consistent but there were questions about the decision and he mentioned he thought he could add some more clarity and background to why the decision was made. M. Kornitsky explained that he believes that is how the Building Inspector, Manny Bettencourt, interpreted it based on the motion that M. Kornitsky made to amend the meeting minutes. M. Kornitsky mentioned he believed M. Bettencourt has taken this into consideration on whether or not to issue a cease and desist or a special permit for the construction of the wall.

Mr. Jakious then refers back to the plans for the wall, and lays large maps for the Board out for them to review. He explains two elements to the plans. Mr. Jakious used the proposed map and explained the wall again. M. Kornitsky then pointed to a section on a map and explained that how he sees it (points to a section) everything in that section can be 81.5 feet, and then points to another wall and states that needs to be 77.5. Mr. Jakious clarified what M. Kornitsky had just explained, M. Kornitsky added, that nothing can be higher than 81.5. Mr. Jakious then mentioned a terrace and stated that it cannot go over 73.5, and Mr. Jakious and M. Kornitsky reviewed the maps to clarify this statement. Mr. Jakious then reiterated that there are two elements, there is an almost serpentine wall at 81.5 and a terrace at 73.5. Mr. Jakious stated that the proposed terracing is important, because it was agreed, to decrease it, because it will decrease the mass for him, and the public sight line from Humphrey Street. Mr. Jakious explained that if you were to lower the wall to 73.5, then the long windy wall currently at 81.5 be lowered to 77.5, and a terrace of 73.5.

M. Kornitsky stated no, and explained if the terrace was 73.5 on the final plan then his intention is to remain at the 73.5 elevation on the plan. M. Kornitsky then using the map stated that if the wall is 81.5 (points on map) then the wall could be 77.5 if there was an interior wall and the wall was stepped back. Mr. Jakious then asked for clarity, that the wall he described that runs in, as he described, a serpentine path, needs to be lowered to 77.5 and the terrace remains at 73.5, M. Kornitsky disagreed. M. Kornitsky explained that a piece (points to the map) should be shown as on the plan that if it is 73.5 it should be 73.5 not 77.5, (Mr. Jakious mentioned he agreed). M. Kornitsky then explained (using the map) a section that should be 77.5, and explained there could be an

interior wall. Mr. Jakious stated he is not speaking on the interior wall yet, only the primary. M. Kornitsky then using the map outlined the heights and certain sections of the wall.

Mr. Jakious then moved on to discussing the landscape plan for the property, George Wattendorf (the property owner and petitioner) asked to respond. M. Kornitsky explains to Mr. Wattendorf that he will have time to respond. Mr. Jakious used a large landscaping map of the property to explain his understanding of the proposed wall, and explained the plan shows a wall and a terrace. Mr. Jakious asked that based upon M. Kornitsky's amended minutes the wall should not exceed 77.5. M. Kornitsky explained his understanding, that including the allowance of 81.5 if there was an interior wall. M. Kornitsky then explained to the Board that the decision permitted the petitioner to step and allow for an interior wall at 81.5.

D. Doherty asked the height of the specific part of the wall, in question. M. Kornitsky explained that the proposed plans show it at elevation 81.5 and that the petitioner said that they could step it so that they could reduce (points to section on map) it by four feet. M. Kornitsky explained it would be no higher than 77.5 then step back, there would be another wall that could be up to 81.5. M. Kornitsky then stated he'd need to see the filed plan, Mr. Wattendorf in the audience explained he had it with him, M. Kornitsky asked him to bring it forward.

Mr. Wattendorf then used the map and explained his understanding of the wall and the different wall heights. Mr. Wattendorf stated the area of concern, raised by the neighbor's present (Mr. Wattendorf showed on the map the neighbor's property) and explained they weren't effected by the height of the wall.

A. Rose then stated that there is a 20-foot wall that needs to get dropped to 16 feet, regardless of the elevation, and stated that if you step it in, it can go back to 20 feet. Mr. Wattendorf agreed. A. Rose then explained again that there was a 20-foot wall that the mass needed to be broken, so it was dropped four feet, then moved in and then step it back up. A. Rose stated it be flat when you walked onto the backyard and take away the burden on the view. Mr. Wattendorf then stated that the strip of wall Mr. Jakious is complaining about is only 8 feet, Mr. Jakious stated he is complaining about the elevation. Mr. Jakious explained that what was agreed to was a yard at 77.5, M. Kornitsky and A. Rose disagreed. M. Kornitsky explained the wall would be stepped, it would be 81.5 but the wall would be lowered to 77.5. Mr. Jakious asked for clarity on the plans on how the wall and yard would be done. M. Kornitsky explained that would be up to the petitioner. Mr. Jakious reiterated that the special permit says that the wall must be drawn as it is shown on the plans.

M. Kornitsky reiterated that he is looking to clarify the minutes of the October 26 meeting. M. Kornitsky stated that if Mr. Jakious disagrees then he can take whatever recourse he sees fit.

Mr. Jakious stated that he has more questions. M. Kornitsky again stated that this is a motion to amend the minutes of the meeting and explained what that meant, and asked Mr. Jakious to point out what he believes the minutes do not reflect and to do it concisely. Mr. Jakious asked if he was able to ask a question, M. Kornitsky stated that he did not need to allow the questions, that he has made a motion to reflect the minutes of the October 26th meeting appropriately, and invited Mr. Jakious to point out items in the minutes that he did not agree with. Mr. Jakious agreed and asked for a copy of the amendments that M. Kornitsky had provided.

Mr. Jakious then read from the minutes the motion made by M. Kornitsky regarding wall height, Mr. Jakious then stated that he does not see how revision number 9 is correct then. Mr. Jakious then brings up that he does not believe revision number 10 to be correct as well, and stated that nothing what was said in those two revisions was said during the October 26th meeting.

Mr. Jakious also stated that bullet point one is factually incorrect because Mr. James Emmanuel (landscape architect) mentioned landscape features on a plan from October 24th, but the landscape features were on a plan from October 4th.

Mr. Jakious then went on to explain his thoughts on bullet point two, which regards Mr. Emmanuel mentioning the lowering the 20-foot wall by four feet, and read what Mr. Emmanuel stated, regarding the ability to lower the wall and the meeting with the neighbors. Mr. Jakious stated that Mr. Emmanuel was talking about lowering the yard, not just the impact of the 20-foot wall.

Mr. Jakious continued on to bullet number three, and mentioned this bullet regards the breaking up of the mass of the proposed wall by terracing. Mr. Jakious continued to read what Mr. Emmanuel stated to the Board, and then mentioned that Mr. Emmanuel was talking about lowering the wall by four feet.

Mr. Jakious then mentioned that bullet point four only mentioned “stepped wall”. Mr. Jakious mentioned that he had listened to the audio for this section and that the section of the audio was not talking about the wall in the proposed yard, but A. Rose speaking about a wall at the Hanover property. Mr. Jakious stated that bullet point 4 is ambiguous and that it misrepresents what was said.

Mr. Jakious mentioned that there are nine instances of Mr. Wattendorf’s team mentioning or referencing the lowering of the yard by four feet. Mr. Jakious mentioned this was not written in the minutes or the amended. Mr. Jakious then read from an audio transcript some of the times that this lowering of the wall was mentioned or referenced.

Mr. Jakious mentioned that he is most concerned with the allowance of a secondary wall, and that this was discussed for one minute by Board member A. Rose and the landscape engineer for the project, James Emmanuel. Mr. Jakious then reads a text version of the audio from the October 26 hearing. Mr. Jakious mentioned that from what was heard that night, what was agreed to at the October 26th meeting was to lower the entire yard four feet to 77.5 which allows for a second wall, but then Mr. Jakious stated the M. Kornitsky’s motion does not provide any guidance on where that wall is. Mr. Jakious stated that this means that the secondary wall can be placed immediately behind the main wall and go right back up to 81.5, which Mr. Jakious stated goes in the face of the nine promises said at the October 26th meeting to lower the wall. Mr. Jakious stated to the Board that they cannot let this pass, because there is nothing to stop Mr. Wattendorf from applying for a building permit, and then pointed to a wall on a map and stated that, the wall (Mr. Jakious is pointing too) is already there. M. Kornitsky again reiterated that this is a motion to amend the meeting minutes. Mr. Jakious then stated that there is a six-foot wall already built without a permit, and then showed pictures to the Board of the wall. Mr. Jakious stated that the Building Inspector will grant a building permit for the illegally built wall and that there needs to be plans that represent what is happening, and that the Board must stop what is happening. Mr. Jakious stated it is outside the scope of what is proposed, it provides a safety hazard, a quality of life issue, and an impact to the property value of the abutters and that this has a direct impact on the view-line from Humphrey Street.

Mr. Jakious stated that the ways in which it has changed, is vastly different, and believes the only responsible thing to do is for the Board to stop the work immediately until there are agreed upon plans. Mr. Jakious then apologized for taking up the Boards time.

M. Kornitsky thanked Mr. Jakious, and then stated in terms of his motion, that he agrees with Mr. Jakious to amend the motion he earlier made (but has not yet been voted on) to delete the bullet point 4 from the record, and to include the bullet point 8 Mr. Jakious provided to the Board. M. Kornitsky stated that he believes Mr. Jakious’s description is accurate and will include that in the motion.

M. Kornitsky asks for other comments.

Mr. Wattendorf began to explain the building of the wall, M. Kornitsky stopped him and stated the discussion currently is only regarding the minutes. Mr. Wattendorf asked for some clarity on the situation, M. Kornitsky explained that he has deleted one of the 10 line items from his amendments, and will be adding the bullet point number 8 from Mr. Jakious, which describes a certain portion of the audio from the meeting.

Mr. Jakious stated it is this level of ambiguity from the first meeting which is what lead to where they are now and that the plans must be stopped, until accurate plans are provided. M. Kornitsky explained that is for the Building Inspector, and M. Kornitsky that Mr. Jakious has certain appellate rights and explains the process of appealing, and that it can possibly end up again in front of the Board and then Mr. Jakious can explain everything, and if the Building Inspector should be issuing a cease and desist. Mr. Jakious then again reiterated his stance, that the Board should not pass the motion, with revisions 9 and 10 because they were never said. M. Kornitsky mentioned that he would agree with Mr. Jakious that those exact words were never spoken but that what is in there is M. Kornitsky’s intent in making the motion as to what he saw and understood the finish elevation height would be, and that he looked to reference the exact plans so there would be no mistake about what plan was being addressed, and then M. Kornitsky mentioned that he respectfully disagreed with Mr. Jakious and that he will keep number 9 and 10 in his motion.

M. Kornitsky asked if there were further comments. Mr. Wattendorf asked for clarity on what was being deleted. M. Kornitsky explained that bullet 4 was being deleted and that Mr. Jakious bullet point number 8 would be added, explaining it accurately reflects a certain portion of the October 26 meeting audio of Mr. Rose and Mr. Emmanuel. M. Kornitsky then asked for any other comments.

A. Rose then asked for clarity on what happens from this point. A. Rose asked if the Building Inspector is to issue a building permit and Mr. Jakious asks to stop the permit, then it would come back before the Board, M. Kornitsky responded that is what generally happens. A. Rose then asked if the meeting is reopened and the issues and can be cleared up, M. Kornitsky responded that he sees this issue as how he sees it, and if the Building Inspector issues the permit, then M. Kornitsky does not know if everyone on the Board also sees it that way. Mr. Jakious then stated that the issue is, is that the wall is already there, and that it was built without a permit, and that the day after the meeting, when a building permit is filed, the wall is done. A. Rose mentioned there can be an appeal and M. Kornitsky responded that petitioners can build things without permits at their own peril. H. Roman asked a question regarding bullet number 10 on the list of revisions. H. Roman states that she was under the impression that the yard would be lower and the step would be closer to the home, and not that it was another step in the wall. A. Rose agreed, but mentioned that the litigation of this point will not take place at this hearing. A. Rose then stated that, how that description sounds, the petitioner could make a wall 6-feet and step back one inch and go up four more feet. M. Kornitsky that, that is a fair comment, but that he envisioned the wall stepped back by an unknown distance to lower the massing, just as how the side wall was stepped back. H. Roman stated that she would expect it right off the patio, then a wall stepped down to the yard. Mr. Jakious then stated that there was a sidebar conversation with Mr. Wattendorf and his team that what was mentioned, was agreed too. Mr. Wattendorf then stated that he disagrees and that there was a step wall shown on the plan, which is the step wall they were talking about, continuing that step wall around and lowering that the lower wall which was already done on Mr. Jakious side of the property. Mr. Wattendorf stated they had already lowered the wall and were going to continue to lower it, because it is stepped already, from 20-feet to 16-feet, and the step wall that was already shown on the plans, was going to ring around, Mr. Wattendorf then approached the Board and showed the plans.

M. Kornitsky explains that there was no discussion on how far back the new interior wall would be constructed, other than the comparison to Mr. Roses. Mr. Rose mentioned his comment and then Mr. Jakious read from the hearing audio, a section where Mr. Emmanuel agreed with A. Rose. M. Kornitsky mentioned that he has no problem adding that amendment to the motion.

Mr. Wattendorf then comes forward to the Board with plans and explains to the Board what the plans show.

A. Rose then stated that clarification should be added in the motion, M. Kornitsky then mentioned that there was no discussion about how far back the new interior wall would be constructed from the exterior wall other than the comparison to Mr. Roses yard. M. Kornitsky then stated that this amendment will be called number 11. Mr. Jakious asked that Mr. Quinn (Mr. Wattendorfs lawyer) opening remarks be added, which mentioned depressing the entire height of the wall, and mentioned that there are several references to reducing the height of the wall. M. Kornitsky mentioned that when the hearing is back in front of the Board then that is the opportunity, but at the moment, M. Kornitsky mentioned he is looking to reflect the meeting minutes more accurately. Mr. Jakious stated that he was not looking to coming back a third time, A. Rose stated that he does not think that is possible because the hearing will need to be opened to have the discussion and clarify what the comments are.

M. Kornitsky then clarified his motion he has made to the Board. M. Kornitsky stated the number 11 was added, that there was no discussion about the distance from the furthest wall to the interior wall, M. Kornitsky has added the amendment brought forth at the meeting from Mr. Jakious and has deleted amendment number four.

The amendments read as followed:

1. James Emmanuel described the terracing of the wall as shown on the Oct. 20 and 24 Plans (3:53 of tape)
2. James Emmanuel described the lowering of the 20-foot wall by 4 feet (3:54 of tape)
3. James Emmanuel described the wall as "broken up to decrease the massing" (3:56 of tape)
4. DELETED
5. A lower wall, with heights of 16-feet and 11-feet described (4:17 of tape)
6. Peter Ogren describes the terraced wall, as shown on plan, as 2 segments 7 feet a piece (4:17 of tape) and discusses lowering the wall to 16-feet and 11-feet respectively.

7. Mr. Jakious speaks at 4:42 of tape. At 4:45:38, he states that in discussions with the landscape architect and Mr. Wattendorf, they stated they could bring the wall down 4 feet. He then stated, "If that were the final determination of Board, I would not object to that as a plan".

8. a. 4:49:50 (Mr. Rose) "You come out of your back and you have where you're really going to use your yard then you have the rest of you yard and you've got a big yard past that. I've got a little upper level that has 3 steps and a stone wall and then it goes down onto, like, a soccer field. So, in the practical use, you could put three feet of your wall and get where you want it to sit outside and have your family etc., drop down three steps, which is nothing, and then have your backyard for all your grandchildren to play soccer and put the nets up and then thereby reducing the back wall"

b. 4:50:30 (Mr. Bosworth, Petitioners architect) "Andy, I know your house, I know exactly what you're talking about, and that is exactly the diagram we have come up with to relieve the four feet we're talking about"

c. 4:50:37 (Mr. Rose) "Oh, so you took the four feet by putting the step... oh you already did it?"

d. 4:50:41 (Mr. Bosworth) "Yes, great idea" [Laughter from audience]

e. 4:50:50 (Someone?) "We should have talked to you earlier"

f. 4:50:51 (Mr. Rose) "I think actually from a use standpoint, it's like your segmenting, it's like instead of having an open floor plan, it's like having a living room and dining room"

g. 4:50:57 (Mr. Bosworth) "yep"

h. 4:51:01 (Someone on Mr. Wattendorfs team) "We're just talking about the same thing, which our engineer told us would gain us the four feet"

i. 4:51:06 (Mr. Bosworth) "Right"

* Mr. Jakious added amendment

9. The Motion made by Marc Kornitsky provided for the finish elevation of the "PROPOSED SEGMENTAL CONCRETE UNIT RETAINING WALL" shown on the October 24, 2016 plan of Hayes Engineering, Inc. to not exceed elevation 77.5.

10. The Motion made by Marc Kornitsky provided an additional wall located inside of the PROPOSED SEGMENTAL CONCRETE UNIT RETAINING WALL (i.e., additional "stepped" wall) may be constructed, with a finish elevation of not more than 81.5.

11. There was no discussion of how far back the new interior wall would be constructed from the exterior wall other than comparison to Mr. Rose's yard.

M. Kornitsky then asked if he has a second, D. Doherty seconds, the Board approved.

Mr. Jakious thanked the Board.

M. Kornitsky then moved on to the minutes from the previous ZBA hearing from February 15, 2017.

MOTION : By M. Kornitsky to approve the February 15th, 2017 meeting minutes, Seconded by B. Croft, the Board voted unanimously in favor, the minutes were approved.

ZONING RELIEF PETITIONS

PETITION 16-38

36 EDGHILL ROAD

M. Kornitsky calls forth the representatives for Petition 16-38 (36 Edgehill Road) which was continued from the February 15th meeting.

Application of UBW, Inc. seeking a dimensional special permit and dimensional variance to construct a single-family dwelling in an A2 district on an irregularly shaped lot containing less than the required minimum lot size and with less than required frontage.

Gary Finari, a representative of UBW, Inc. (the Petitioner) comes before the Board. Mr. Finari explains that he will be requesting a withdrawal, because the Building Inspector found that the Petitioner did not need ZBA approval for what they wish to do.

MOTION : by B. Croft to accept the withdrawal without prejudice, seconded by M. Kornitsky, the Board voted unanimously in favor.

PETITION 17-06

96 & 96A PURITAN ROAD

M. Kornitsky calls forth the representatives for Petition 16-06 (96 & 96A Puritan Road).

Application by James Dennis for a use special permit and site plan special permit for a five-unit independent living facility through the conversion of existing structures and any other special permit or variance under the applicable sections of the Bylaw as the Zoning Board shall deem required.

M. Kornitsky explains that the representatives had previously requested a continuation to be granted and to continue their presentation to the April meeting.

MOTION : by M. Kornitsky to continue Petition 17-06 to the April Meeting, seconded by D. Doherty, Petition continued to the April meeting.

PETITION 17-02

48 FARRAGUT ROAD

M. Kornitsky called forth the representatives for Petition 17-02.

Petition 17-02 is an application of Melissa and Nicholas Weinand seeking a dimensional special permit to demolish and rebuild a condemned detached garage adding an 8' x 14' extension to it. Other work includes removing current driveway from off of Ellis Road and relocating it to off of Farragut Road with new curb cut.

Nick Weinand (the petitioner) introduced himself to the Board and explained he lives at 48 Farragut Road with his family and stated he will read a statement to the Board (the statement was added to the file).

Mr. Weinand explained in the statement will explain why he and his wife bought their home on Farragut and background into their family and lives in Swampscott, and on why they wish to replace their condemned garage structure on their property. Mr. Weinand mentioned that the current driveway on the property takes up prime yard space. Mr. Weinand stated that the proposed garage requires a modest expansion, which they have requested in the application. Mr. Weinand explained that he talks with the neighbors daily and he hopes the Board provides authorization.

M. Kornitsky explained that an issue that he sees with the proposed relief, which he mentioned was also pointed out by the Director of Community Development, Peter Kane, that with an accessory building, that a detached accessory building should not be located within 10-feet of the principal building. M. Kornitsky then explained the reorientation of the garage could run into that issue, and explained it could require a dimensional variance. A. Rose stated that he does not believe the petitioner could get a variance, and explained that in his own personal experience, he ran into a building code issue with a similar situation.

Bill Peterson, the petitioners architect, introduced himself to the Board.

A. Rose explained that he has dealt with a similar situation to this with a greenhouse, and explained what the Building Inspector stated that it had to be 10-feet away from the main house, due to building code, not zoning bylaw.

Mr. Peterson explained that he not received that response from any review yet, and mentioned he was unsure what part of the building code, A. Rose was mentioning. A. Rose mentioned that he is referencing the Building Inspector. Mr. Peterson mentioned that, what A. Rose is saying is anecdotal and that he doesn't see it as a zoning issue. Mr. Peterson then stated that if they are to get the relief they would then seek a building permit where it would be reviewed by the Building Inspector.

M. Kornitsky explained, in terms of zoning, he sees it as an issue that has been identified, and went on to explain that he sees the relief required being a variance, because bylaw provides the 10-feet.

Mr. Weinand explained the size of the lot, and explained that because the lot is on a corner, it is awkward. M. Kornitsky asked why the plans call for orienting the garage in a new way instead of off of Ellis. Mr. Weinand explains that the yard space, without the yard currently, is very narrow and not conducive to use, he mentioned the proposed driveway reconfiguration would be similar to the other homes on Farragut. A. Rose and Mr. Weinand with the architect, Mr. Peterson clarified what exactly is being asked. A. Rose

asked if there is a hardship because of the way the land slopes towards Ellis Street and the grade. Mr. Weinand agreed, Mr. Peterson mentioned in terms of use, yes. M. Kornitsky explained that for a variance, the petitioner would need to explain their hardship.

Mr. Peterson explained to the Board the proposed plans for the new garage. Mr. Weinand added that the garage is almost falling in on itself. Mr. Peterson stated there will be a slope on the new driveway.

Rose stated that there might be an issue with the proposed garage being 6-feet from the house instead of 10-feet. Mr. Peterson stated that he will confirm that. Board members then discussed the plans. A. Rose then explained to the Board what he was told by the Building Inspector for his similar past situation, and that it was a fire and building issue.

M. Kornitsky explained what the Fire Department had written as comments, Mr. Peterson mentioned they were on dust control.

B. Croft asked if the garage is currently unusable because of the slope. Mr. Peterson explained what the hardship is, he explained the slope on the side yard makes it unusable for children to play. Mr. Peterson explained that there is a slope on the section where the proposed driveway will go.

M. Kornitsky mentioned it is an accessory structure, detached and asked if the garage could possibly be attached or not. Mr. Weinand mentioned that was one of the considerations, M. Kornitsky mentioned there wouldn't be an issue of it being a detached building. A. Rose then mentioned some problems that could arise from that, including increasing the nonconformity of the building.

D. Doherty and M. Kornitsky discussed the maps and clarified what is shown. Mr. Weinand explained there would be a "bumpout" in the garage to allow for storage and a work bench. A. Rose stated that they can't reorient the garage because they would not be able to fit a car in the garage. A. Rose explained that the petitioner needs to pull the garage forward to fit a car and explained a possible solution on how to construct the garage and require less significant relief. Mr. Peterson mentioned that if the current orientation is kept, it does not fit a modern-day vehicle. A. Rose mentions an idea of elongating the structure and keeping the same orientation. Mr. Weinand explained A. Rose's idea does not speak to the use of the driveway space. The Board then discussed the maps.

M. Kornitsky asked if there was anyone in the audience who was in opposition, there were none.

A. Rose explained his thoughts regarding granting a variance and explained a possible solution to the issue as well as a possible condition that could be added in the decision. M. Kornitsky and A. Rose discuss. A. Rose states that the proposed garage could be pushed back and moved 8 feet away, and then the petitioner would only require a special permit. M. Kornitsky mentioned that this needs to be looked at as a dimensional special permit. A. Rose and M. Kornitsky discuss possible solutions.

Mr. Peterson uses the presentation board he had brought with maps and proposed plans on it to clarify the area that A. Rose and M. Kornitsky are discussing. The Board then amongst themselves discuss if the project can be amended to a point where the petitioners would only need a special permit, using the maps and discussing what they show. D. Doherty mentions this situation is similar to an earlier petition, and mentions the Board should look at the language of Bylaw section 2.6.3.0, which applies where there is an attempt to reduce applicable requirements for yard height and space. D. Doherty explains that the definition of "yard" to him means side, front and back yard, and rear yard, and does not interpret this case as a yard special permit which can be helped with a dimensional special permit and that it is an distance special permit, and reiterated that this is similar to a previous case, which was unresolved. M. Kornitsky asks if the Board understands that the dimensional special permit will allow the Board to reduce the 10-foot distance between the two structures by 20 percent, or if that just applies to yard height, open space and lot coverage.

B. Croft, M. Kornitsky, and D. Doherty discussed the special permit language. M. Kornitsky explained that when the Bylaw was drafted, the drafters drafted it so obscure, the yard issue was not addressed. B. Croft asked D. Doherty why he thinks it is not addressed, D. Doherty responds that this is not a yard requirement the Board can grant relief for, and that he believes it is a distance requirement. M. Kornitsky asked if the Board understood the discussion on the question of whether or not a dimensional special permit provision of the bylaw allows the Board to reduce the distance between the two structures by 20 percent, where it provides the Board to reduce applicable requirements for yard, height, space or lot coverage.

A. Rose mentioned that this should be clarified because the Board could allow something and the Building Inspector could say no, the distance must be 10-feet.

E. Stuart states that it seems to her the home being too close to the garage is a fire safety issue, M. Kornitsky mentioned that it could impede a fire truck getting through. Mr. Peterson explained there will be a fence between the house and the structure, regardless of the distance. E. Stuart mentioned that fire can jump from one building to another. D. Doherty mentioned that he is thinking of 40-feet between buildings as asked in the Bylaw, A. Rose mentioned that it was a mistake left in the Bylaw, and explained his thoughts why.

M. Kornitsky asked the Board what to do, A. Rose mentioned they could sit down with Town Counsel and clarify. M. Kornitsky mentioned could ask the Town Counsel for an opinion. D. Doherty stated that it might not change his mind. D. Doherty stated that he does not see this as a legal question but as an interpretation which is up to the Board. D. Doherty asked the petitioner about connecting the garage. M. Kornitsky mentioned they could look for a special permit, and then asked how many square feet the proposed garage is. A. Rose stated that if the proposal could keep the distance but cut 14-foot length to 10, the garage would be one bay and narrow that would have the right requirements.

A. Rose and H. Roman ask the petitioner if they can cut some distance from the proposal. Mr. Peterson used the maps to clarify the area and the proposal for the Board.

A. Rose explained some possible solutions to reducing the size of the garage and zoning relief required.

Mr. Weinand explained that his concern is if the garage bay is to become too narrow, it would be hard to get a car-door open.

A. Rose continued to explain his solution on amending the proposed garage, regarding changing the dimensions of the structure. Mr. Weinand replied to A. Rose recommendations that his concern would be about rear car-door access.

A. Rose explained that the proposal would not need to go down to 10 feet, but could figure a way to cut the proposal down. Mr. Peterson asked, if the Board would not entertain anything unless the corner is cut to 10-feet. M. Kornitsky explained the distance from the structure to the home needs to go from 6 feet to 10 feet.

A. Rose states that what the petitioners will lose, they would be able to expand on the other side. M. Kornitsky mentioned they can give more relief on the other side. A. Rose used the map to explain his recommendations. Mr. Peterson asks for clarification, that the Board wants the mouth of the garage to be narrower, M. Kornitsky agreed. H. Roman and A. Rose both reiterate that the corner needs to get 10 feet from the home.

Mr. Peterson then mentioned that he would like to request a continuance to get new drawings, and asked for other comments.

D. Doherty mentioned they wish for them to keep the existing orientation and work with that.

A. Rose asked M. Kornitsky to ask if there is opposition, M. Kornitsky mentioned he already did, there was none, and mentioned there are letters of support in the record. M. Kornitsky then explained that the petitioners should work with the neighbors and keep them up to date. Mr. Weinand mentioned that both abutting neighbors were in support.

M. Kornitsky mentioned his thoughts for the petitioners coming back, regarding a narrower garage to get the 10-feet, and to perhaps also having an alternative entrance from the other side. A. Rose mentioned that it is possible to get the 10-feet, it just depends how it is done.

Mr. Weinand asked if the redesign would need to go back before the Historic District, M. Kornitsky read from their comments on what they wanted, mentioning the selection of the door, the windows, and material. Mr. Peterson explained there are two hip roofs that meet each other and that both are symmetrical rectangles and the hipped roof is going to change, so they would want to go back in front, M. Kornitsky agreed they should go back for any changes.

M. Kornitsky mentioned the possible solution of putting the garage in a different spot, A. Rose explained it would kill half of the proposed new back yard. Mr. Peterson mentioned he believes they will be able to amend the garage. M. Kornitsky again asked about another possible amendment to the project, and reiterated that the 10-feet is what needs to be the biggest concern.

R. Landen asked if the garage could be attached on the side and if that would solve the issues. A. Rose mentioned that the petitioner could possibly attach the garage and add a breezeway between the house and the garage, provided that it would be within the 20-percent setbacks. The Board clarified for Mr. Weinand this would be a set of 6-feet. The Weinands and Board discussed this possibility. Mr. Weinand stated he liked that idea.

MOTION : by M. Kornitsky to continue Petition 17-02 to the April meeting, seconded by D. Doherty, the petition was continued.

PETITION 17-03

646 HUMPHREY STREET

M. Kornitsky called forth the petitioner and representatives for petition 17-03.

Paolina Lepore, the petitioner and the owner of Café Paolina, introduces herself to the Board, and then introduced her son, Giovanni Lepore who was also present with her.

M. Kornitsky explained that he understands they are in front of the Board to amend their previous special permit to permit the selling of pizza, ice-cream and etcetera, M. Kornitsky asked what “etcetera” meant. Mr. Lepore explained that in Petition 23-15 (the special permit they are seeking to amend), point number three lists certain food items (pizza, subs, or other uses that may attract children), and they wish to strike that from the special permit.

M. Kornitsky clarified the ask, and read the point in the decision the petitioners are trying to strike. M. Kornitsky then asked Ms. Lepore, to help add background for Board, if she has been at the location since 2003, Ms. Lepore replied yes.

M. Kornitsky then asked if there was anyone in the audience in opposition who wished to be heard.

Joe Dipetro, 16 Glen Road, spoke up and explained he is “kind of” an abutter.

Mr. Dipetro explained that he has lived at this property for all of his life and has witnessed over time the building being built. Mr. Dipetro explained that in discussion with neighbors and family he states there are bylaws that date back to the 1980’s which state that the building was not supposed to be a food or restaurant type, but concedes that the restaurant is in there now. Mr. Dipetro explained that he believes the restaurant to be a safety issue, due to the park being across the street and the traffic from the streets abutting the mall, the Glen Road and Cardillo Terrace area. Mr. Dipietro continued to state that he is concerned over the safety of children crossing the street to buy ice cream and pizza. Mr. Dipetro explained that currently the restaurant is small, and the traffic has been limited to the night time and that a much of the traffic is going in and out of Humphrey Street. Mr. Dipetro further explained that most of the parking at the restaurant is at night, but that many of the businesses in the area are day uses, and there has not been a parking issue.

Mr. Dipetro reiterated that his concern is, that with the addition of pizza and subs, there will be much more activity from the park as well as an increase in cars coming and going from the café’s parking lot, especially at night, because they are picking up food, which Mr. Dipetro explained will present an issue with safety. Mr. Dipetro explained there will be an increase of traffic on Humphrey Street and as well as in his neighborhood area, Glen Road. Mr. Dipetro explained the difficulty that he encounters with pulling on to Humphrey Street, contending with pedestrians as well as traffic coming from Marblehead.

Mr. Dipetro explained the use would draw more traffic to the property, and this will be a traffic safety issue, as it will become dangerous for children to cross the street from the park, as well as an increase of traffic in the area as well as a parking issue.

Next, Attorney Damon Seligson introduced himself to the Board and stated is representing Cindy’s Pizza. Attorney Seligson explained that there is a restriction on the property that goes back to 1984. Attorney Seligson explained the landowner land was entered into a covenant that restricted the petitioner proposed use at the building, because it would be an attractive usage for kids. M. Kornitsky asked if there was a separate recorded covenant, to which Attorney Seligson explained he didn’t know but that there was mention of a covenant in a previous decision. Attorney Seligson explained the building previously was a bank, and then the decision was made to allow the restaurant use.

Attorney Seligson stated the decision at issue, has mandatory language in it, and said there was no opposition at the original decision hearing, but that the Board took the decision that originated from 1984 and applied it to 94'. Attorney Seligson explained it is a large concern because, as Attorney Seligson does not want to argue against more pizza, but that this issue revolves around the safety of children crossing the street. Attorney Seligson entered the deed and decision to the file.

D. Doherty asked the petitioner if she is proposing just table service, and if the items are currently on the menu. The Petitioner and her son explained that they do not wish to sell ice-cream in a cone but it is sold as a desert type menu item.

D. Doherty asked the petitioner if they are currently selling ice-cream as a desert, Ms. Lepore replied that they are. D. Doherty asked then what is the relief the petitioners are seeking. Ms. Lepore stated that they want the restriction from the 23-15 decision to be removed. D. Doherty clarified that it will be table service and asked the petitioners if they will be selling ice-cream in cones, Ms. Lepore stated they would not. Mr. Lepore (the petitioner's son) stated to the Board, that his mother is not looking to put in a large pizza oven either, but they are proposing to possibly make artisan pizzas. D. Doherty asked if it will be take-out pizza, Mr. Lepore stated it would not be. B. Croft asked if they are proposing to sell pizza by the slice, Mr. Lepore replied they are not. D. Doherty asked if the pizza and ice-cream, will be a restaurant menu item, Ms. Lepore replied that it would be. Ms. Lepore stated they want to be like any Italian Restaurant and be able to sell these items. D. Doherty asked how this proposed use runs a fowl of the previous decision, B. Croft read the original decision language, and D. Doherty mentioned that he believes the obvious concern from the decisions restriction was concern over take-out. D. Doherty stated that if this is not going to be take-out, then he did not see this as an issue.

Attorney Seligson stated from the audience that he is concerned over children running across the street to buy slices of pizza. D. Doherty explained that the petitioner is not looking to sell slices or ice-cream cones. Attorney Seligson stated that no one is looking to regulate the petitioners menu, but to regulate the type of "on the fly, on the go" products, which as Attorney Seligson stated, places like Cindy's across the street sells, where children come to. B. Croft stated that clarification is needed, and asked if there will be take out counter service, such as at Cindy's, or table service, like at Italian restaurants and that the pizza option's will be menu items. Ms. Lepore stated it would be like the latter.

A. Rose stated a comment regarding the issue of children crossing the street. A. Rose then explained his thoughts on the petitioner's request, that the special permit and covenant that was required when the building was built can be either liked or disliked A. Rose continued to state that state that the zoning has changed since the original building was built. And that presently a building like the one Café Paolina is in, then the developers would not need a special permit, if they conformed with the dimensions. A. Rose continued his thoughts on the zoning bylaw, and B. Croft stated that the hearing did not have to go that far tonight. A. Rose and M. Kornitsky briefly discussed hypothetical relief questions.

From the audience, Stuart Levine spoke up and stated that he has been a Swampscott resident since 2003 and that he believes Swampscott should encourage family-owned businesses. Mr. Levine mentioned that if Café Paolina is going to sell pizza and ice-cream he is sure they will do it in a responsible way as she has shown in the past, stating she will not endanger the community, endanger the children, an explained people will be able to figure out how to cross the street, and that this is a sit-down restaurant, that attracts a lot of people and is inexpensive, and mentioned he believes it is much nicer then chain restaurants in the town, and encouraged the Board to allow her to sell these items.

Mr. Dipetro explained the traffic flow of the street in front of Café Paolina, and explained that the street has blind spots, that as he explained, people miss. Mr. Dipetro explained that he has crossed the street multiple times, and that his daughter was almost hit one time during the daylight on the street. Mr. Dipetro explained cars use the road like a race track. Mr. Dipetro stated the road is very dangerous to cross, to go to the park, Cindy's or the basketball court. Mr. Dipetro reiterated that he knows about the safety of the street, and explained that his mother was killed on that street. Mr. Dipetro reiterated it is a dangerous street, and mentioned that now that pizza will be a part of the menu, people will drive up and pick up pizzas and drive in and out.

D. Doherty then clarified to the opposition what the petitioner is asking for their menu to allow, and that they are not stating the petitioner does not want to do take-out pizzas. D. Doherty explained that the Board can condition the relief that they are to allow. Mr. Dipetro reiterated that people will be able to drive and get the pizza as takeout. D. Doherty stated it will not be take-out and that the Board could make conditions on what type of food services are allowed. Mr. Dipetro asked who will make sure that take-

out doesn't happen, D. Doherty explained the Board will, that it will be a condition. M. Kornitsky mentioned that if came to an enforcement issue, that would be for the building inspector. D. Doherty continued to explain some possible conditions that could be added, and then asked the Board for their thoughts. D. Doherty asked Ms. Lepore to state what she is going to sell.

Ms. Lepore explained that she currently has restrictions on their menu and they wish it removed. The Board then discussed possible conditions to add. Paolina explained possible conditions to add.

M. Kornitsky closed the public hearing and constituted the Board as the five regular members.

While D. Doherty is explaining the conditions the Board discusses other possible conditions to add. A. Rose and R. Landen state that the conditions should not allow "grab and go" pizza. The Board discussed the condition on pick up at the restaurant. B. Croft mentioned that his concern is not over vehicular traffic, but that the café is in a commercial plaza, and brings up the issue of restricting certain businesses types of services they offer, and that the Board should not legislate the amount of cars coming in and out of the parking lot. B. Croft mentions that limiting uses which are attractive for children is one the Board can condition, by stating no slices, no subs, and no ice-cream. B. Croft stated that not allowing an individual to stop at the restaurant and pick up dinner, is a tough condition to impose and does not think that should be decided by the Board. B. Croft reread the restriction (number 3 from the original decision) and stated that he does not think take-out or delivery is enveloped in that restriction, D. Doherty agreed. D. Doherty explained that he did not think the Board should speak to confectionary items, because he doesn't think it applies for the restaurant. D. Doherty asked the petitioner if ice-cream and pizza are the two things that she is concerned about having, Ms. Lepore stated they are.

MOTION : by D. Doherty that Board amend the special permit granted for Petition 23-15 to strike the condition number 3 that states the petitioner shall not sell ice-cream, candy, or other confectionary products, pizza or subs, or other uses which may be an attraction to children, and add the condition that the Café cannot sell pizza by the slice, ice-cream cones or ice-cream in cups to go, ice-cream and pizza be served at the tables, seconded by M. Kornitsky, unanimously approved by the Board.

PETITION 16-09

141 HUMPHREY STREET

Petitioner Swampscott Associates, LLC is seeking a review regarding the sunset provision (six-month) of a previously amended special permit allowing nighttime entertainment.

M. Kornitsky asks Attorney Drucas if he would like both of the petitions for 141 Humphrey Street to be heard together (Swampscott Associates, LLC are also the petitioner in Petition 17-04, a petition to be heard immediately following the sunset review). Attorney Drucas responded that he did not think it necessary. Attorney Drucas then began his presentation.

Attorney Drucas explained the decision in 2016 for petition 16-09 included a sunset review that was supposed to be reviewed in October, but there was no meeting.

Attorney Chris Drucas introduces himself to the Board and explains he is representing the Petitioner Swampscott Associates, LLC.

Attorney Drucas explained to the Board that he has spoken with the Police chief, and he said there have not been any noise complaints or any other complaints, in reference to the outdoor serving of alcohol, serving people on the deck. Attorney Drucas asked for that condition to be removed, from petition 16-09, and relief regarding entertainment is in their other petition.

M. Kornitsky mentions that the applicant in Petition 16-09 is also seeking relief that deals with entertainment, in their other petition, petition 17-04. M. Kornitsky continues to explain that on the sunset provision, that requirement could be deleted, and choose to have it in Swampscott Associated, LLC's request for an expansion of their entertainment in their other petition. M. Kornitsky mentioned that if the Board was to decide to have another sunset then, this could be added in there. M. Kornitsky then stated that for the purposes of petition 16-09, this would close the petition out.

Attorney Drucas and the Board agree on this course of action.

MOTION : by M. Kornitsky to remove the sunset provision from petition 16-09 based upon applicants petition 17-04 being filed and the Boards consideration of the nighttime entertainment, seconded by D. Doherty. Motion approved unanimously.

The Board was constituted as the five regular members.

Attorney Drucas then asked M. Kornitsky to ask if anyone present in the audience wished to be heard on that petition. There was none.

M. Kornitsky then reaffirmed the vote, and made his motion, which was seconded again by D. Doherty and again unanimously approved by the Board.

PETITION 16-09

141 HUMPHREY STREET

M. Kornitsky then opens up petition 17-04.

Petition 17-04 is an application by Swampscott Associates, LLC (same petitioner as the previous agenda item) seeking a special permit (nonconforming use/structure), special permit (signs), and a site plan special permit. The applicants are seeking amendments to their original special permit for the addition of a new sign on The Cove Café, the extension of an entertainment permit to midnight for the roof deck, and the addition of a structure and retractable awning on the roof deck.

Attorney Drucas once again introduces himself to the Board, as well as the petitioners, whom he is representing. Attorney Drucas also stated that Dana Robinson is also present, and that he is the project engineer, who will answer questions, regarding the relief being sought to put an awning on a portion of the back deck. Attorney Drucas went on to state that the petitioner is also seeking an expansion on their entertainment license from 10pm to midnight in order to assist the business with many customer requests. Attorney Drucas then handed the presentation off to the project engineer, Dana Robinson.

Mr. Robinson begins by explaining this will be a standard deck canopy, mixed with retractable unit and a fixed unit, it has fire-rated fabric, aluminum powder coated structure, all to allow for exterior dining usage to help protect customers from the elements. Mr. Robinson explains his firm has done these types of structures all over, and will be able to answer questions on the integrity of the proposed unit, as well as aesthetic and composition questions. Mr. Robinson then showed the Board a photoshopped rendering of the structure. Mr. Robinson mentioned there is nothing too unique about the unit and it is the standard product his firm installs. Mr. Robinson explains to the Board that about 50% of the structure is retractable to allow sunlight, and that this is a pre-engineered product, and that the rest is a fixed canopy to close in the rest of the irregular space.

M. Kornitsky, using the plans, asks what would be on the side panels, asking if they would be clear and a customer would have the ability to see through them, and continued to ask if the top will be blue marine canvas. Mr. Robinson replied yes to both questions, and then explained the type of canvas that it will be, mentioning that it is a leading fabric of the industry. M. Kornitsky then asked if the frame will be permanent or if there will be plans to disassemble it. Mr. Robinson replied that it will be constructed as a permanent structure. M. Kornitsky then clarified his question to ask if the use is to be used year-round or proposing the structure to be seasonal.

Attorney Drucas responded that the canopy will be removed, but that the structure would stay. Attorney Drucas stated that the Fire Department wants the structure to be sprinkled, and that the structure will have a dry system mounted on the frames, all of which Attorney Drucas explains will make it hard to take down. M. Kornitsky mentioned the question was one that, Town Planner and Director of Community Development Peter Kane had posed. Attorney Drucas then stated that the petitioners want the sprinkler system.

Marty Bloom (of Swampscott Associates, LLC) then came forward to the Board with a video rendering of what the inside of the structure will look like when closed. The representatives clarified certain questions from the Board using the video.

Mr. Robinson using the map, showed the Board the three main retractables to allow sunlight I will be the cabana over the bar, a middle section, and a side section. Mr. Robinson then explained the fixed sections are the edges, sides, and the peak where the plumbing and sprinklers will be, the peak is also where the water is diverted onto the roof.

A. Rose then asked for clarification on the maps, the Representative explained. H. Roman asked if the walls will go up, to which the representative stated they would. A. Rose asked how they would go up, to which Mr. Robinson replied they are motorized and will accordion up. A. Rose asked for a picture of the walls accordioned up, Mr. Robinson shows a picture. A. Rose asked if the walls will

be concealed when rolled up. Mr. Robinson mentions you will not see them. E. Stuart asks for the dimensions of the enclosure, and A. Rose asks what the percentage of the deck will be uncovered. Attorney Drucas stated about a third will be uncovered and two thirds covered. The Boards members and different members of the petitioner's team discuss the plans.

Attorney Drucas mentioned that if they were not required to have sprinklers, then there would not be a problem with taking the structure down. But the sprinkling of the structure is what makes it difficult to then take down.

M. Kornitsky mentioned that he is concerned, that he did not know the structure was going to be fixed from what he read in the agenda for the petition. M. Kornitsky posed the question, of this will count for additional square footage for the property structure? D. Doherty mentioned that he does not think the petition was advertised right. Attorney Drucas then stated that it is not going to be permanent, to which D. Doherty mentioned it is more enclosing that anything else. D. Doherty stated that he believes the petition should be advertised as enclosing the roof deck. Attorney Drucas explained that they are not, to which D. Doherty stated they are, by two thirds. Attorney Drucas stated that they will only put down the awning when the weather requires the awning to be put down. Attorney Drucas clarified the size of the structure compared to the roof deck. D. Doherty mentioned that the frame of the structure will always be there, to which Mr. Bloom said was correct. Mr. Bloom stated that the sprinkler system is what will make the structure stay in place. D. Doherty again reiterated that he believes it was advertised wrong, and that he envisioned their former structure, more than what they have now. D. Doherty then stated that he did not believe the advertisement adequately alerted people to what the petitioners wish to do. D. Doherty asked the Board if anyone else was surprised by what is being proposed. A. Paprocki stated that it was bigger than he thought it would be, and D. Doherty stated that it is more permanent then he believed it would be. M. Kornitsky then mentioned that the comment from the Fire department was that the structure is required to have a sprinkler system under the awning. A representative of Swampscott Associates, LLC stated that they have the sprinkler system because it is code if they want to have entertainment. Mr. Bloom stated that they were being asked to sprinkle whatever was going to be put on the deck. Attorney Drucas mentions that if you are to look at the Town Bylaw definition of structure, then anything put up is looked at as a structure, because, Attorney Drucas states, the definition is very broad. Attorney Drucas states it was advertised as a structure, due to the broad definition of structure in the Zoning Bylaw. A. Rose asked if the Board would want to entertain what the alternative structure would look like without the sprinkler system. Attorney Drucas mentioned the petitioners would be able to take the structure down then. D. Doherty clarifies that he is concerned with if it was advertised right, and reiterated that he was surprised by what is requested. D. Doherty mentioned that the advertisement of the petition juxtaposes structure with retractable awning. D. Doherty states that he knows because of the broad definition of structure in the Bylaws, that an awning is a structure. D. Doherty then explained how he understood the advertisement. Attorney Drucas asks D. Doherty how he would have described it. M. Kornitsky stated the square footage could have been mentioned. D. Doherty stated that the advertisement should have stated the frame would be permanent and not going to be able to be rolled away. Attorney Drucas mentioned that when the petition was filed, they did not know the Fire Department would require sprinklers. D. Doherty mentioned that he believes it should have been re-described after the Fire Department required sprinklers. Attorney Drucas and D. Doherty then discuss how the proposal should be described and advertised. Attorney Drucas mentioned that the awning is a structure, and that's what it was called. D. Doherty mentioned they could have distinguished the proposal that it is not a tent or an awning. Attorney Drucas stated that it wouldn't matter if it was a tent or an awning, it's a structure and the petitioner calls it a structure. D. Doherty reiterated that he is unsure if they public were adequately informed, and mentioned the lack of public present for the hearing on the petition.

B. Croft asked a question regarding the design of the awning. B. Croft asked if there needs to be permanent structures to support the fire suppression system, the petitioners agree. B. Croft then asked if it was to be removed the fire suppression system would also be removed, the representatives again agree. B. Croft asks what about during winter, Attorney Drucas using the map explained that all the blue seen will be gone. B. Croft asks for clarification, that in the winter, if the frame will only be visible, the representatives agreed, as well as, if the deck is used in the winter, the representatives stated it is not. B. Croft asked if it will be heated, the representatives said no.

A. Paprocki asked why the structure is going to be so big, and has questions regarding the height, asking if there are pitch requirements. Mr. Robinson stated yes, and that they needed the structure to go over the cabana to enclose the space, to mitigate water, and because of wind.

A. Paprocki asked if there is any practical alternate to bring the height down from the proposed 16 feet. A. Paprocki explains that is a big thing to him, especially with the permanent frame, as elements permanently seen from the outside, the height is what people could possibly react to.

A. Paprocki clarifies and asks if there is a practical way for the height to be brought down, and still have the canopy be usable. Mr. Robinson and Mr. Bloom state the height was dictated by the galley kitchen and the bar.

A. Rose asked if the sprinkler was a requirement and not a request, the representatives respond yes. A. Rose then asked if the sprinkler is by code or was it just asked for. Attorney Drucas responded the Fire Chief required it. A. Rose asked the alternative. Mr. Bloom explained it would have been like a tent, but because any structure that went up there needed to be sprinkled. A. Paprocki asked if the alternative was same size, but the only difference was it could be taken down. Mr. Bloom responded yes, and explained that any covering they proposed for the deck was immediately told to be sprinkled, Attorney Drucas adds, because of the fire code.

Attorney Drucas then asked his client to explain why the request for the structure is being made. Mr. Bloom explained there have been many requests to use the deck for events, but Mr. Bloom explained cannot book anything not knowing what the weather will be. Mr. Bloom explains he cannot guarantee the weather, and described the proposal such as a convertible top to a car. When the weather is nice it will be open, but when the weather is bad it can be closed. R. Landen asked if people will still have the same attraction to the deck, even with the structure on top. Mr. Bloom stated he guarantees it, and that if can guarantees weather safety. R. Landen explained the possibility of people not liking the structure in the back of their possible event photos. Mr. Bloom explained it is like a well-planned insurance policy. M. Kornitsky explained his concern is the aesthetics and structure, and is worried about the appearance from the public way. M. Kornitsky mentions he understands why they want it, but struggles with the appearance of the structure.

B. Croft asked if this structure will be used to lengthen the season. Mr. Bloom explained he didn't know, and that it is in response to requests for events they have received. Mr. Bloom stated last year the deck was not open till mid-June but that they will have to see. M. Kornitsky stated that he does not have a problem with the length of time in the year the structure is used.

B. Croft mentioned that currently, at some point in the year the deck needs to be closed due to weather, but now this structure can extend the season. Mr. Bloom replied that it could. B. Croft mentioned that this could increase parking.

A. Rose explained that if the structure was designed in a way that was more incorporated into the design of the building it could look better, M. Kornitsky agreed. E. Stuart mentioned she is concerned with all the posts being vertical, what it will look like. Mr. Bloom stated that they could paint the structure viewable from the street white if the Board requested it. The Board discussed how to make the structure look more permanent.

Mr. Robinson showed other examples of other places that have done this. The Board discussed the different examples shown. Mr. Robinson showed a two-tier deck one in Portsmouth, NH, a similar structure to the one proposed at Great Neck Golf Club, yet bigger. Mr. Robinson showed one at Michaels Harbor Side in Newburyport, MA with vertical structure. Another example was shown of Atlantic Grille in Rye, NH, which had a custom pergola added on. The Board mentions some of the examples look more permanent. Mr. Robison shows an example of one at Trump National at Ferry Point, NY. The Board discuss the different examples and what the Board likes from the different examples. M. Kornitsky and the representatives talked about different ways to make the structure look more permanent or to soften the height of the structure and to maintain the site line. Mr. Bloom mentions they are open for suggestions. M. Kornitsky mentions possibly permitting something to allow the mirroring of the roof, to make it so the petitioners do not need to put as much of a temporary structure. Mr. Bloom asked if M. Kornitsky meant like a hard roof. M. Kornitsky used the examples to show what he meant. Mr. Bloom asked if the color and height is of issue. M. Kornitsky explained it is not just the color, but his issue is with the partial look of the structure when the awning is retracted. A. Paprocki mentions his issue is with the quality of the structure too, that some of the examples have some custom work, such as the pergola or the wood sidings. Mr. Bloom mentioned part of the issue is the shape of the lot, which is irregular. A. Rose mentions that part of the issue is the structure does not integrate with the roof. E. Stuart asks if the rooflines could be connected anymore. Mr. Bloom states the intention is to connect them, to help mitigate weather concerns. Mr. Robinson reiterated that it is an irregular shaped space, but that a lot has been put into figuring out the best way to put the structure in. Mr. Robinson mentions this was the best design that maintains functionality, mentioning when it rains it closes and when it's sunny it's open. Mr. Bloom also mentioned that the wind is

a factor too, which is one of the reasons it was engineered the way it was. Mr. Robinson mentioned he would like to minimize all the structural members, but he cannot because its per code. The Board continued to discuss the proposal and possible solutions. B. Croft mentions that instead of minimizing could possibly camouflage the structural members. The Board continues to discuss possible ways to reduce the permanent look of the structure. Mr. Robinson mentioned if the Board wishes the structure to be painted they can change the color. The Board continued to discuss possible ideas, Mr. Robinson explained that the structure was designed in a specific way to help mitigate water off of it. The Board then discusses with the petitioner and their representatives the possibility of wrapping the vertical aluminum members in wood. The Petitioner and the representatives were open to the idea. Both Attorney Drucas and Mr. Bloom stated they could change the color of the structure, and Mr. Bloom also stated they could wrap the structures. Attorney Drucas stated that the petitioners could make the structure white and wrap the columns white as well. A member of the petitioners team stated that the original blue color chosen was done so that it would not be so intrusive with the water. Mr. Robinson states that the ability to make the structure white is possible, and he is open to it, if the petitioners are as well, but that the white color will fade over time, being on the ocean. Attorney Drucas stated that his clients would be open to changing the color of the structure if needed.

A. Paprocki mentioned that if the height of the structure cannot be altered then he believes that the Board would need to see the structure from different angles, such as Humphrey Street. D. Doherty reiterates this point to the petitioner and their team, mentioning that if it is stated that the structure wouldn't be seen from the street, the Board would want to see renderings that show that. M. Kornitsky mentions that this will be permanent so he wishes to see more angles as well, B. Croft mentions that this is a high-profile property. Attorney Drucas asked Mr. Robinson if he could provide the Board with more renderings and angles of the structure. Mr. Robinson states he can give more renderings of angles, colors, and M. Kornitsky added renderings of what the structure would look like if it was wrapped in something to soften the appearance of the structure.

M. Kornitsky mentioned that he could possibly be inclined to consider something that is more permanent that fit in with the architectural design of the structure even if it required much more significant relief. M. Kornitsky asked if the petitioner and their representatives would want to consider this alternative as well. Mr. Bloom mentioned that this idea began as an easy and simple thought process, but if they wanted to go and cover the roof deck that could have been done, but they want to still have the deck open when the weather is nice. M. Kornitsky mentions as well that he wishes to see the deck open, but that he must abide by the bylaw and that as he sees the structure now, he does not believe the relief can be granted. M. Kornitsky explains in the past the Board has been accommodating to the restaurant, and the petitioner mentioned they have been accommodating to the Town as well with regulating use on the deck. M. Kornitsky mentions that he is just suggesting the petitioner look at other ways that the structure could be minimized or there be a possibility for an alternative that might be better for the restaurant, something that provides better protection but would be more permanent. M. Kornitsky mentioned it would be more relief, but he is open to it. Attorney Drucas mentioned that he understands that the Board wishes the petitioner to do something with the verticals on the structure and the frame as well to make it look more aesthetically pleasing. A. Rose adds that he wishes to see other alternatives (such as different color ways on the structure), Attorney Drucas agrees.

M. Kornitsky asked if the structural supports need to remain, and then clarified that when it is the offseason, and the canvas is not there, could some of the vertical members be removed. The petitioners and B. Croft explain that each structural support has a fire head on them. M. Kornitsky asked if there is a way to work with the Fire Department so a fire suppression system is not required. The petitioner explains it is because of the design of the building and explained the fire suppression system currently in the building, and the complexity of the fire suppression system.

Attorney Drucas mentioned that he and his clients could come back with the renderings and items the Board wished to see.

M. Kornitsky asked to hear the other aspects of relief the petitioners are requesting.

Attorney Drucas stated that if the relief is granted to allow the ability to cover the roof deck partially, then they could expand the entertainment license from 10 PM to 12 Midnight. D. Doherty asked the extent of the entertainment on the deck currently, Mr. Bloom explained that there was not, due to issues with weather. Mr. Bloom continued to explain that they are learning the business as they go along, and mentioned that Red Rocks, a previous restaurant at the property, was a large entertainment venue, but that

they (the petitioner) do not wish to have entertainment in the restaurant. Mr. Bloom stated it would denigrate the dining experience, and that the deck is a good spot for the entertainment to go.

M. Kornitsky mentioned that Town Planner P. Kane had a comment about possibly only extending the entertainment license to 11 PM, Attorney Drucas mentioned could go to 11:30 PM. M. Kornitsky mentioned the possibility of having another sunset provision be added. B. Croft asked the reasoning for why the petitioners want the entertainment license to go to midnight. One of the petitioner's representatives mentioned that event requests are usually for five hours. A. Rose mentioned that Marian Court was only allowed to go to 11 PM. D. Doherty asked if the 12-midnight extension is only for special events, Mr. Bloom stated that there would be regular entertainment on the deck as well. Mr. Bloom mentioned that the restaurant could live with the 11:30 PM restriction. And reiterated the 12 PM extension would help with special events that usually run 5-6 hours.

A. Rose asked the other Board members if they want to grant a 11:30 PM sunset provision or a midnight sunset provision. D. Doherty stated that he believes they should grant a 11 PM sunset provision, Attorney Drucas mentioned could do 11 PM and no sunset. M. Kornitsky mentioned that 11 PM does not mean everyone has to get off the deck at 11 PM but that the entertainment would need to stop then. D. Doherty mentioned that this will be the first time that there will be music on the deck. Mr. Bloom mentioned that their goal is not to have rock'n'roll bands on the deck but that they would have light music. M. Kornitsky mentioned that it is difficult to restrict what functions would want to have as their music, Mr. Bloom agreed and mentioned they would want lee way, M. Kornitsky mentioned that they also should not want to upset their neighbors, B. Croft added the ability for sound to travel across the water as well.

The Board then discussed possible conditions. M. Kornitsky mentioned possibly restricting the entertainment extension for only Thursday, Friday, Saturday or all 7 days till 11 PM. A. Rose states his support for the whole week. M. Kornitsky stated that they could set a sunset provision to allow entertainment till 11pm weekly and review the sunset in October. D. Doherty asked for clarity on the days it would be allowed, M. Kornitsky reiterated it would be every day. B. Croft asked when the restaurant closes on Sundays, Mr. Bloom mentioned 10 PM or so. D. Doherty mentioned that he believes the entertainment should only be extended for Thursday – Saturday, Attorney Drucas stated if they are having a sunset, why not allow the entertainment for 7 days a week. A. Rose mentioned again his support for the whole week, D. Doherty asked what events happen on Monday – Wednesday, A. Rose mentioned if allowed there could be events on those days now, Mr. Bloom mentioned that they are trying to have entertainment every night.

H. Roman and M. Kornitsky asked if there was anyone present in opposition, there was none.

The Board then discussed the current music that is played in the background on the deck, commending it.

A possible motion was made by M. Kornitsky to allow entertainment till 11 PM but to encourage the petitioner to minimize the volume and for the petitioner to use their discretion because there is a sunset.

M. Kornitsky mentions before a motion is made on the entertainment extension, the sign relief the petitioners are seeking need to be heard. Attorney Drucas shows the Board pictures of what the signs will look like, and mentioned there will be two signs and they will be 10 square feet each, with 2 ft by 5 ft dimensions. D. Doherty mentioned that he believes the ice-cream window on the building to currently be too small, and mentioned the window on the previous building was much larger. D. Doherty mentioned if the window was bigger, the sign could be put inside the building, which would be visible from an expanded window. D. Doherty asked if the petitioners would consider making the window bigger and putting the menu inside on the back wall. One of the petitioner's representatives said there is not enough wall space. E. Stuart asked where the petitioners are proposing the menu to be, Attorney Drucas clarified it would be on the side of the house and showed this on the map. D. Doherty also asked for clarification on where the menu will go, it was clarified on the map by Attorney Drucas. M. Kornitsky mentioned comments made by P. Kane regarding the signs, these included the Cove sign need to be smaller than the primary, only the name, logo, and standard graphic. M. Kornitsky mentioned that he personally likes the font of the sign. M. Kornitsky mentioned that he believes the petitioners met all the suggestions with the signs, and that he has no issues with the proposed signs.

M. Kornitsky asked if the menu board being proposed will be the same size as shown, Attorney Drucas mentioned that it will not be that big. D. Doherty asked where the menu board will be in relation to the window, a representative clarified where the board is going, D. Doherty mentioned he asked because he doesn't want the menu to be too far away from the window. The Board and

members of the petitioners team discuss the façade of the building on the maps. M. Kornitsky asked for the Boards thoughts on the menu board in the front, the Board and the representatives continued to discuss the menu location and structure façade. M. Kornitsky asked Attorney Drucas if the request for relief included the menu board, Attorney Drucas mentioned he believed it did.

M. Kornitsky asked if a screen he sees shown on one of the maps is what is going in front of the mechanicals, Attorney Drucas stated it is. A. Paprocki asked if the screening could be more horizontal instead of lattice work, a representative stated it could. Attorney Drucas mentioned that the screening needs to be open to allow air circulation for the mechanicals. A. Paprocki mentioned that he as well as possibly the Board might want to see more renderings of the proposed screening, Attorney Drucas mentioned they can get that. M. Kornitsky clarified for the Board that behind a false wall is where the mechanicals were supposed to go, but the wall was never built.

D. Doherty mentioned that the petitioner could come back with new renderings

M. Kornitsky mentioned that the Board cannot split up petition items, and mentioned he has no problems with the Cove Café signs, but wants the petitioner to come back with renderings of the menu and screening, and mentioned he would like to see some greenery. Mr. Bloom interjected that the bollards in front of the structure were put there in place of greenery. The Board and the petitioners discuss possible places where greenery could go, the petitioners stressed there is very limited space, and that the bollards were asked by Historical.

A. Rose asked for more renderings as well. D. Doherty asks that the new additional renderings where he would like to see the renderings from, including from the street in front, from the entering Swampscott sign, and further down Humphrey Street towards GE. Mr. Bloom agrees with these locations.

Attorney Drucas brings up, that comments regarding trash were brought up at the Planning Board site plan review of the property.

The petitioner explained that in the summer the trash is picked up 7 days a week, and in the winter the trash is picked up 3 days a week. He mentioned that there is a refrigerated trash room on the property, Mr. Bloom mentioned there is no trash compactor. The petitioner mentioned that he had not heard of issues with the trash until the Planning Board review, where the issue of the trash being left out front was brought up. The petitioner explained the reason the trash stays out there is because the trash is put out front at midnight, when the workers leave, and the trash firm used to come at 6:30 AM, but due to new restrictions the trash firm comes at 7 AM to collect the trash. The petitioner mentions the trash is put in containers and left outside from midnight to 7 AM. M. Kornitsky asks for more clarity, the petitioner explains the trash is taken from the trash room, put in a container and leave the trash where the picnic tables are. M. Kornitsky asked, do they put the trash near the picnic tables because the trash company will not come to the structure and get the trash. The petitioner mentions they do not have a dumpster, but two, three yard containers that the trash is moved in. The petitioner explained that the trash firm will not come to the structure to get the trash. The petitioner mentioned that the workers then take the containers in the morning, wash them, and bring them back inside. Mr. Bloom stated it is very much like how many restaurants in Boston do it. The petitioner mentions this system is better than having a dumpster sit in the front 24/7 which could lead to health issues in the summer. The petitioner explained the restaurant rather has a locked refrigerated room.

Attorney Drucas mentioned that they can come back with renderings.

MOTION : by M. Kornitsky to continue Petition 17-04, seconded by A. Paprocki, the petition was continued to the April meeting.

M. Kornitsky began to call for the last item on the agenda, and explained to the petitioner and their representative present that due to time constraints the Board might not be able to hear the petition that evening. The Petitioner, Myrna Nunez introduced herself to the Board. M. Kornitsky, again reiterated that he does not think, due to time, that the Board will be able to hear the petition and asked if they would sign a continuance. A. Rose mentioned the petition is straightforward and that it could be heard quickly, M. Kornitsky then agreed.

PETITION 17-07

646 HUMPHREY STREET

The petitioner, Ms. Nunez, explained she is the Director of a Spanish immersion preschool, which already has a location at 40 Hardy Road, but that they are looking to expand, due to a growing waiting list and interest. Ms. Nunez explained that as a preschool, they need to follow state and municipal regulations and that this location they have chosen, was previously a rented and operated as a fitness studio.

A. Rose stated that he believes the proposal to be a great use. M. Kornitsky asked if there will be access to an outside area. Ms. Nunez says they wish to open the preschool in September, and that there is green space but there is no fence, so they cannot use it currently, but hope in the future, when they open in September, they could come back. M. Kornitsky explained that if they wish to fence it in to use the space they could come back before the Board.

M. Kornitsky asked what if the proposed hours of operation will be Monday through Friday, 7:30 AM to 6 PM, Ms Nunez agreed, and stated that is also the hours of operation for their current location.

M. Kornitsky asked if there is any opposition, there was none.

M. Kornitsky explained that he sees this proposed use, as allowed under the Dover Amendment that it is protected, and that the Board has limited ability to not permit the use, and that the Board can reasonably condition it, but M. Kornitsky explained the only condition he really sees is the use remaining inside, as there is not plan for outdoor use for the children during the school day.

M. Kornitsky constituted the Board as himself, R. Landen, B. Croft, D. Doherty, and A. Paprocki.

MOTION : by R. Landen to approve Application 17-07 seeking a special permit to open a preschool center at 646 Humphrey Street, with the condition that no outdoor use, by children on the property, seconded by B. Croft, the Board unanimously approved the petition.

Ms. Nunez asked if in the future if they wish to use the green space, what they would need to do, M. Kornitsky explained they would have to come back before the Board.

PETITION 16-06 AMENDMENT

55 BERKSHIRE DRIVE

Petition 16-06 Amendment is an application by Tariq Milton seeking to amend a previous special permit to build a new front brick steps/stairs platform, 6' x 25' front entry with brick and stone, and new bulkhead stairs.

David Haliotis of HH Design group introduced himself to the Board. Mr. Haliotis explained that he was previously in front of the Board for a special permit for the property, but that he is back now with his client (the petitioner) in regards to the front of the property. Mr. Haliotis explained the new application is for the new front brick and stone stairs, which are 6' x 25' front entry, as well as bulkhead stairs on the side. Mr. Haliotis also mentioned that he was emailed by P. Kane regarding the windows on the home, and asked if he should present on that as well. D. Doherty mentioned P. Kane's comments included both windows and the brick platform, which D. Doherty mentioned is already built, Mr. Haliotis agreed. D. Doherty mentioned P. Kane stated he had concern about that the building did conform to the plans approved by the Board. D. Doherty continued that the original decision said that all work would be in accordance with the plans stamped and approved by the Board. D. Doherty also mentioned that P. Kane stated the property departed from the plans in two respects, the windows, which D. Doherty stated are dramatically different than the approved. M. Kornitsky then explained the plans to the Board for clarification.

Mr. Haliotis then explained to the Board what the plans originally asked for. Mr. Haliotis explained that he had discussed with P. Kane and M. Bettencourt, was to remove the windows, which they did, but then they were made square. Mr. Haliotis continued to discuss what the plans show.

D. Doherty asked for P. Kane's comments, M. Kornitsky reads P. Kane's comments on the petition.

M. Kornitsky asked why the windows were changed from what was originally approved. Mr. Haliotis explained that round windows were approved, but that round windows were removed, and then Mr. Haliotis used the plans to show what he was describing. M. Kornitsky and Mr. Haliotis went over the windows that were removed. M. Kornitsky stated the problem is that, the homes does not look like the other homes in the neighborhood.

A. Paprocki also mentioned that there are concerns over the massing of the structure as well, and pointed out his concerns on the maps, stating the roof lines are different, and that there are other pieces and parts have changed. A. Paprocki showed M. Kornitsky on the map, also mentioning the door was also larger. Mr. Haliotis explained the door is different because of construction, M. Kornitsky stated that the petitioner must show the correct rendering to the Board of the stairs.

Mr. Haliotis and A. Paprocki discussed the plans, and A. Paprocki stated that he understands the abutter comments and concerns and mentioned there are deviations that have been pointed out. H. Roman mentioned that the roof looks like it should have been pitched. The Board continued to discuss the plans.

B. Croft asked what the specific relief, the petitioner is seeking, M. Kornitsky clarified they are seeking relief for the front steps, which are already built, M. Kornitsky explained there was supposed to be a modest wooden step in the front but it ended up being brick.

B. Croft asked what the thought process was to go from wood to brick. Mr. Haliotis explained that wasn't part of the plans but that the owner stated to build the bigger stairs, B. Croft clarified that the owner deviated from the plans, Mr. Haliotis agreed, and explained that is why they are back before the Board, and explained that is why the roofline is different and the door and it is bigger than a conventional door.

M. Kornitsky asked why the petitioner built brick stairs, mentioning it was a big change from the plans. B. Croft stated that it sounded like it was the owners doing. M. Kornitsky also asked why the owner deviated from the plans. Mr. Haliotis clarified what the stairs look like now on a map in front of the Board, and that they are 10 feet from the line.

M. Kornitsky asked how the stairs went from 13.9 feet to 10.4, Mr. Haliotis explained the brick stairs platform is what did it. The Board and Mr. Haliotis discuss what the plans show, compared to what is built.

M. Kornitsky asked if the Petitioner would continue the petition to the next meeting, so that M. Kornitsky could take a look at the property. M. Kornitsky also mentioned that he wondered if the petitioner needed to provide better as-built plans as well to see all of the deviations. M. Kornitsky stated the he wants to make sure he knows where everything was built, and wants a better as-built plan to clarify. Mr. Haliotis asked what the Board is concerned with, M. Kornitsky explained the home was not built by what was approved, and that there are many differences. M. Kornitsky stated that the petitioner is seeking relief for stairs, after they were built. M. Kornitsky mentioned that he wishes to confirm it was built as it supposed to be built, and wants the as-built to confirm the dimensions and distances of the newly built construction. M. Kornitsky mentioned that he does not know if he will need relief for what was built, or if the neighbors will challenge what was built, and file a request for the Building Inspector to enforce for compliance with the permit. M. Kornitsky mentioned all the dimensions should be put in as-built plans, and every difference should be shown on elevation maps as well. And that the petitioner should look for relief for the changes, M. Kornitsky mentioned, the stair case, the windows, and the roofline are some of the changes he needs to see as-built plans for. M. Kornitsky stated whatever changes from the as-built to the approved plans needs to be listed and brought back before the Board.

A. Rose asked what the point is of asking for the dimensions and then looking for possible relief to grant. M. Kornitsky mentioned that he believes there should be some consequences. A. Rose mentioned that the Board would be possibly justifying construction that was built improperly and against the Boards wishes, and that it could be for the Board to say you cannot get relief, you did this against the Boards approval.

D. Doherty mentioned that the petitioner needs relief for the front platform, in regards to the setback. A. Rose mentioned that the platform is already built. M. Kornitsky mentioned that he wants to know the dimensions of the newly built things. A. Rose mentioned that the Board should not validate the construction, M. Kornitsky agreed, but that it is also not up to the Board to be the enforcer, but that the property owner is on their own now because they went against the wishes of the Board, instead of having the owner come back and try and validate their departure from the approved plans.

Mr. Haliotis showed the Board maps of the property and explained the why the front platform was built like it was, pointing out the columns, windows, and door.

A. Rose mentioned that it is not for the Board to tell the petitioner to take down the stairs but for the neighbors to tell the building inspector to take it down. M. Kornitsky mentioned that he is not ready to vote on the stairs yet. A. Rose and D. Doherty both agreed the stairs are different. M. Kornitsky mentioned that he would like to see how far the stairs encroach on the setbacks. A. Rose mentioned the possibility of the door being removed and adding the correct door and making the lower front portion of the front platform look right, E. Stuart mentioned the dormers are much bigger. A. Rose stated that the Board cannot endorse this change, and that it is up to the property owner to take them off or not, to which M. Kornitsky mentioned that is a building inspector issue. Mr. Haliotis and M. Kornitsky discussed the dormers on the plans, to which M. Kornitsky stated more plans need to be shown that have the correct dimensions.

M. Kornitsky stated that he wants the measurements on the stairs, and A. Rose asked for the door measurements as well, and mentioned the issue with trying to fix the dormers, but explained how the door and front area could be fixed. M. Kornitsky mentioned he agrees with that as well, A. Rose mentioned it is still at risk of the neighbors telling the building inspector they do not agree with what was built, to which M. Kornitsky mentioned he does not want to bless what was built.

M. Kornitsky asked if the petitioner will come back for the April meeting and have the measurements that have been requested. Mr. Haliotis mentioned there was a lot of conversation with P. Kane and Town Building Inspector Manny Bettencourt about the plans and the bulkhead on the property which was made smaller, which would not need relief anymore, but they still are seeking relief. D. Doherty mentioned it would be good to have M. Bettencourt at the next meeting.

M. Kornitsky asked if there was anyone in the audience who wished to be heard, there was none.

M. Kornitsky mentioned the Board received two letters in opposition of the petition from abutters, which have been entered into the file.

MOTION : by M. Kornitsky to continue Petition 16-06 Amendment to the April ZBA hearing, seconded by A. Paprocki, the Board approved.

Mr. Haliotis asked if the Board would want work done on the elevation maps to show the door and the smaller columns, to which M. Kornitsky stated that the petitioner should speak with the neighbors on what they might look for. M. Kornitsky mentioned something that fits in with the neighborhood better, might be a better idea. Mr. Haliotis showed the Board a plan, which he mentioned is not permanent, but showed a reiteration, M. Kornitsky mentioned he should speak with P. Kane.

PETITION 17-05

20 PURITAN PARK

Petition 17-05 is an application by Daniel and Andrea Franklin for a special permit (nonconforming use/structure), use special permit, and a site plan special permit. The applicants are seeking to add a second-story addition to the existing home.

Nick Paolucci of Mass Architect introduced himself as the projects architect. Andrea Franklin, the petitioner was present with her daughter as well, and introduced herself to the Board.

M. Kornitsky asked for a description of the petition. Mr. Paolucci explained that the home will be going from one story to two. Mr. Paolucci mentioned there is a small driveway that the petitioners are looking to expand as well. Mr. Paolucci stated that at the site plan review in front of the Planning Board, that the Planning Board mentioned issues with a proposed door which would be installed at the top of the second-floor addition, but that it is being removed. M. Kornitsky asked if due to occupancy issues, Mr. Paolucci mentioned the home is a single-family, and the Franklin family are the only ones living in the home. Mr. Paolucci then explained, concerns regarding the materials were also raised at the Planning Board meeting. Mr. Paolucci explained the addition will be built with hardy plank, and horizontal siding on the second floor, the color of which will match the first-floor brick mortar. Mr. Paolucci mentioned that the front entry is set back at the moment and it is white siding, and want to tie the whole proposal together and use the same siding up-stairs.

M. Kornitsky asked if there will be an overhang between the second-floor siding and the first, Mr. Paolucci stated it will be flush, with the brick only hanging over the entry way. Mr. Paolucci explained that the white siding will be replaced with the same materials on the second floor.

M. Kornitsky asked about the proposed driveway expansion, and if it is necessary to go more towards the abutter, or could the expansion be done more towards the center of the home. Mr. Paolucci explained that petitioners wish to expand the driveway by splitting the expansion on each side, and that currently, the driveway is 9 and ½ feet from the property line. Mr. Paolucci explained that originally, the plan was to extend the driveway towards the property line, but now, the proposal is to split the difference and expand 3 feet on either side of the current driveway, and keep the curb-cut as it is existing. Mr. Paolucci pointed to a tree on a map in front of the Board, and explained that expanding towards the center of the home would take away part of the front yard, and the tree would have to be removed.

M. Kornitsky asked if anyone present had questions.

Susan Lefkowitz, of 13 Puritan Park, asked if the petitioners are turning the home into a two-family. The petitioner stated they were not and explained that their daughter will be living at home and working from home.

Karen Whitman, of 19 Puritan Park, explained her home is across the street, and asked about the secondary apartment proposal. M. Kornitsky stated it is not a secondary apartment, to which Ms. Whitman asked why it has its own separate access and a kitchenette. M. Kornitsky stated that the Bylaws have a specific definition, for what a secondary apartment, but if it is the same family you are permitted to have a separate kitchenette in their home.

Ms. Whitman asked how to protect against a non-relative renting the apartment or having the apartment being listed on *Airbnb*, with its own access and kitchen. M. Kornitsky stated, that enforcement is beyond the Boards jurisdiction. M. Kornitsky explained a hypothetical situation where a developer was to make a similar type of project, and the Board was to suspect that the developer may convert the use from what they describe it as currently, that is not something that the Board cannot really protect for. M. Kornitsky mentioned P. Kane pointed out this issue in his comments that the proposed second floor door, triggered analysis of a secondary apartment. M. Kornitsky explained that the elimination of the proposed door at the top of the stairs, eliminated the addition being labeled as a secondary apartment. M. Kornitsky explained the special permit is for a nonconforming structure, and that is the analysis the Board is reviewing, not the use. M. Kornitsky stated that if in the future, it is observed that more than a single-family is living in the house, then that would be an enforcement issue taken up with the Town Building Inspector.

Ms. Whitman asked for conditions to be levied against the allowance of *Airbnb*. M. Kornitsky stated that it is required the home is a single-family use, and that is what is required. M. Kornitsky stated the Bylaw does not regulate Airbnb but states that one family must reside. M. Kornitsky mentioned there is no per se restriction in the Bylaws against Airbnb. M. Kornitsky went on to state that the petitioners are seeking a special permit for an addition, and nothing for use, only for dimension.

D. Doherty asked if the petitioners are allowed to have a secondary kitchenette in a single-family, both M. Kornitsky and A. Paprocki agreed it is allowed. Ms. Franklin explained there would be no stove, just a microwave and a refrigerator.

D. Doherty reviewed the language in the Bylaw regarding the definition of dwelling unit, and read the language. D. Doherty then mentioned that it seems there is multiple kitchens allowed in a single family, to which M. Kornitsky stated he did not see a restriction. D. Doherty asked about P. Kane's analysis on the multiple kitchens. M. Kornitsky mentioned his comments were regarding the secondary door which would make the addition be considered a secondary apartment. M. Kornitsky then mentioned that if the petitioner ever wanted the addition to be a secondary apartment, then they could come back and register it with the Board. A. Rose stated it could not be, due to its size, M. Kornitsky agreed, A. Rose mentioned that is possibly the neighbor's legal protection against the addition becoming a secondary apartment.

M. Kornitsky then explained to the abutters that the addition will be too large to be considered a secondary apartment, because it will be over 800 sf, and it needs to be a part of the single-family residence.

M. Kornitsky asked if there was anyone else who wished to speak on the petition.

Joel Cohen, of 491 Puritan Road, mentioned to the Board that his home is on the corner of Puritan Road and Puritan Park, and that his home is across (diagonally) from the petitioner's home. Mr. Cohen mentioned that M. Kornitsky had previously used a phrase (during another petition), which referred to a project fitting in with neighborhood characteristic, and commended M. Kornitsky taking into account aesthetics in the previous petition. Mr. Cohen urged the Board to take a look at Puritan Park stated the street is

one of the most beautiful streets in Swampscott. Mr. Cohen explained there are 8 homes on the street, seven are described as colonials. Mr. Cohen explained the seven homes were built between the years of 1920 and 1941. Mr. Cohen then stated that there is only one home on the street described as a ranch, which Mr. Cohen stated is the petitioners home, and it was built in 1950, Mr. Cohen mentioned to the Board that he knows the home well because as a youth he played in the home while it was being built, and then explained that his family has been in the same house on Puritan Road since 1943 (mentioned a hiatus of one year). Mr. Cohen then stated that he finds the structure (20 Puritan Park) (Mr. Cohen then mentioned that he had not seen the plans until the meeting) appalling, and stated that it has nothing to do with the neighborhood, and that it is outrageous.

M. Kornitsky asked Mr. Cohen what he found outrageous about the home and if Mr. Cohen believes the ranch styled home fits into the neighborhood. Mr. Cohen stated he did not, and mentioned it is the one outlier. M. Kornitsky asked Mr. Cohen if this is more detrimental than the ranch, to explain why he thinks this. Mr. Cohen stated he does, and then explained that the home is larger, and that the current ranch has brick veneer, and that the new proposal does not, and that he does not know what to call the style of the home with the added proposal. Mr. Cohen then reiterated to the Board that they should visit the street and look at the homes. M. Kornitsky mentioned to Mr. Cohen that he knows the road and homes very well. Mr. Cohen then stated to the Board that he strongly objects the project on the aesthetic characteristics, and that it could have a negative effect on the beauty of the neighborhood and property values. Mr. Cohen stated to the Board that the petitioners have the right to add another story to their home, and that if it was in unity more with the neighborhood he would like it. Mr. Cohen asked for an attempt to be made at fitting in with the surroundings. Mr. Cohen then mentioned the home is an eyesore and that he has a negative opinion of the proposal.

Ms. Whitman then mentioned an email from Bob Biletich that stated he did not want the driveway to be widened toward his property. M. Kornitsky asked Ms. Whitman if she has any opinions about the aesthetics of the proposed. Ms. Whitman stated she has concerns with the aesthetics and noise during construction. M. Kornitsky stated that noise during construction was not an issue that he is worried about, but wants to hear more on the issues with the aesthetics, and if she believes it is much more substantially detrimental than what is currently there. Ms. Whitman continued to state that she is worried the proposal won't fit in with the neighborhood, and that it is not taking the existing brick and expanding upon that, and the proposal is using something else that contradicts the brick. M. Kornitsky asked about thoughts on the existing home. Ms. Whitman mentioned that she agreed it is a ranch on a street of as she described of beautiful homes and that the ranch detracts from the rest of the homes, and that she believes that a two-story structure enhances, but not the proposed structure.

M. Kornitsky asked the petitioner how they would describe the style of the new home with the proposed addition, M. Kornitsky clarified his question to be comparing the existing with the proposed. Mr. Paolucci, the petitioner's architect, mentioned he has driven down the street and there are shingle style and brick style houses, D. Doherty asked if there is a combination, Mr. Paolucci agreed. Mr. Paolucci then stated that the home will be new construction, which will make the home look better, and then mentioned it is the only single-story home on the street, and mentioned that he doesn't see how adding the addition will detract from the other homes, more than it does now. Mr. Paolucci stated that if the home was to be made to look like the other brick and older homes on the street then they would have to have a total demolition. Mr. Paolucci stated that this proposal is within budget and that it fulfills the petitioners needs, and that it works well with the other houses. Mr. Cohen asked if the addition could be done in brick veneer, the petitioner responded the home is not veneer, it is a brick house, and that it could not be done to do the addition to match the bricks. Mr. Cohen stated the Town website listed it as veneer, to which the petitioner disagreed.

M. Kornitsky asked for questions from the Board.

B. Croft asked for more clarity on the driveway, asking if the petitioner wished to widen it and if there is an option to widen it closer to the door of the existing home, rather than towards the driveway it abuts. The petitioner stated the driveway does not abut another, and then stated that she has photos of the driveway showing the distance between the driveway and the other home. B. Croft asked if they are seeking to widen the driveway towards that home, the petitioner and her daughter stated that they are doing it by two feet. D. Doherty asked to see the photos of the driveway. B. Croft asked Ms. Whitman for a copy of the email from Mr. Biletich.

Ms. Franklin and her daughter then approached the Board and showed photos on their phone of their property and driveway currently. M. Kornitsky asked why the driveway needed to be widened, the petitioner stated that currently the driveway is not wide enough, and that the wheels of their vehicles barely fit. The Board and the petitioner discuss what the photos showed.

E. Stuart asked if there will be a curb cut, the petitioners replied the curb cut will not be necessary.

M. Kornitsky asked A. Paprocki on his thoughts about the home being substantially more detrimental. A. Paprocki mentioned the comments from the abutters and petitioner regarding neighborhood character. A. Paprocki mentioned that he would like to see more analysis of what other homes and facades of these homes look like in the area around the property and a description of how the home fits in. A. Paprocki mentioned that he has driven down the street, but does not think he has enough in front of him to say that the addition does or does not comply. A. Paprocki also asked if the petitioners had reviewed the plans with the neighbors, which could help them get a sense of the tweaks that the neighbors might like to see, be made. M. Kornitsky mentioned that it is just a suggestion, not a requirement and asked if the petitioners had spoken/met with the neighbors, Ms. Franklin replied that they had only put the ads in, which M. Kornitsky reiterated they are not required to. B. Croft mentioned that he is less concerned with the petitioners meeting with the abutters, although he does believe it to be a good idea, but that personally, he is not overly-troubled by the design, to which M. Kornitsky agreed. Mr. Cohen then asked if he could mention something, M. Kornitsky allowed him to, after mentioning that it has to do with the petition.

Mr. Cohen then mentioned that he had read something that stated that projects with a site plan special permit need environmental impact statement is required, M. Kornitsky mentioned that is for site-plan special permits, which this was not. Mr. Cohen asked if it is a use special permit, M. Kornitsky stated that it is a dimensional special permit. M. Kornitsky earlier had stated incorrectly that the petition is not a site-plan special permit. D. Doherty and A. Paprocki clarified to M. Kornitsky that in fact it was a site-plan special, Assistant Town Planner Andrew Levin pointed out that the Planning Boards comments were included in the packets handed to the Board. Mr. Paolucci mentioned that the Planning Board had mentioned some conditions. D. Doherty and M. Kornitsky asked how many square feet is being added to the home, A. Rose stated over 800 sf, and Mr. Paolucci stated over 1100 sf. M. Kornitsky stated that he does not see an environmental impact statement needed, because this is a single-family use.

Ms. Whitman mentioned that it was previously stated that there are combination, brick and siding façade homes on the street, Ms. Whitman stated that there are no combinations, and that homes on the street are one or the other. M. Kornitsky clarified that he believed Mr. Paolucci was talking about the different types of homes on the street. Ms. Whitman reiterated that it is one or the other, no combinations. M. Kornitsky mentioned that the Planning Boards comments were sufficient for the site plan special permit, and then reiterated A. Paprocki's comments on possibly continuing and gathering more information.

D. Doherty reiterated A. Paprocki's request for more information. M. Kornitsky mentioned that it is the petitioners burden to prove their proposed project will not be more detrimental to the neighborhood. M. Kornitsky mentioned the proposal should be consistent with the scale and style of the neighborhood, to show the style and characteristics that are consistent with the size and the features to use that to show it is not substantially more detrimental.

D. Doherty mentioned to the petitioner that they should bring in photos of other homes in the neighborhood. The petitioner asked what is considered the neighborhood, M. Kornitsky replied their street (Puritan Park) and intersecting roads, D. Doherty mentioned homes in the general proximity and helped clarify for the petitioner.

M. Kornitsky mentioned it seemed like the petition would be continued. The petitioner asked if they only needed to bring in photographs. M. Kornitsky stated to bring in any evidence they believe that shows it is not more detrimental, and asked the petitioner to look at the Bylaw. M. Kornitsky mentioned the Bylaw has the Board look at usually scale and style.

Mr. Paolucci asked what is detrimental about the proposal and for clarification, M. Kornitsky explained that the petitioner should show how the proposed is an improvement to what is already existing. M. Kornitsky mentioned the different pictures that the petitioners could bring to show, such as existing conditions compared to proposed, and to show it is an improvement. B. Croft mentioned that if all the homes are two-story and this is the only single-story show that, Mr. Paolucci mentioned that statement is correct and that making it two-stories is making it less detrimental. A. Rose mentioned the Door, and that it could be a six panel to match the other homes. A. Rose stated that he personally thinks the home siding should be white to go with the brick. A. Rose also

reiterated that the renderings make the second-floor siding look like it overhangs, but understands it is not. A. Rose mentioned some possible ideas for the proposed home to add, to help it fit with the neighborhood more. The Board discussed the windows that will be added, the petitioner added that there are certain things that will be added, specifically for the windows which were not shown on the map.

H. Roman also asked for more of these details to be shown on the plans, then the Board discussed what the plans show. B. Croft asked what the second-floor siding color will be, Mr. Paolucci explained it will be a tan type color to match the bricks mortar. An abutter asked how long construction will take, M. Kornitsky mentioned that the Board did not get that far and that the Board would vote to continue the petition, and at the next meeting there would be more evidence presented. M. Kornitsky then encouraged the petitioner to get the contact information from the abutters so that they could share the plans with the abutters in advance. A. Rose explained the petitioners and the architect could go down the streets in the general area and pick out a couple of details from the home and use them to make their position.

MOTION : by M. Kornitsky to continue the hearing to the April meeting, Seconded by D. Doherty, the continuance was granted.

PETITION 17-01

450 PARADISE ROAD

M. Kornitsky calls forth petition 17-01.

Petition 17-01 is an application by CC LOT B5 LP seeking a special permit (signs) to add “blade” signs in a B-3 zoned district, and relief to add signs closer than 30 feet.

M. Kornitsky explained Board member A. Rose recused himself from the Board, as he is the petitioner in this application, and then M. Kornitsky stated that this is a very straight forward petition.

A. Rose reiterated that it is a very straightforward petition and that he is added “blade” signs on the building, which Board of Selectmen member, Peter Spellios and Director of Community Development P. Kane have encouraged A. Rose mentioned. D. Doherty asked how many businesses are going to have them, A. Rose replied that four. A. Rose mentioned they are looking for relief, because as stated they need to be 30 ft apart, but the stores are not 30 ft apart. A. Rose mentioned that otherwise the signs conform, and that originally the signs were bigger, but shortened the signs from 30” to 24”. B. Croft asked for clarification a “blade” sign. A. Rose explained it is a sign that sticks out from the building, and mentioned they will be more visible from the road. A. Rose mentioned an area that B. Croft could travel to, to see examples, and A. Rose stated the signs look more “lifestyle” centered. A. Rose mentioned he agrees with P. Kane’s comments regarding height and background color, and mentioned the material.

M. Kornitsky mentioned that he is a fan of blade signs, and then asked if there were any questions, there was none.

M. Kornitsky constituted the Board as himself, E. Stuart, H. Roman, A. Paprocki, and D. Doherty.

MOTION : by E. Stuart to approve the special permit for Petition 17-01, 450 Paradise Road, to permit the blade signs as shown in the plans, in conformity with the planners comments, A. Paprocki seconded, the petition was approved.

Meeting adjourned at 11:18 PM.

Andrew Levin
Assistant Town Planner