



# TOWN OF SWAMPSCOTT

## ZONING BOARD OF APPEALS

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

**MEMBERS**  
MARC KORNITSKY, ESQ., CHAIR  
DANIEL DOHERTY, ESQ., VICE CHAIR  
BRADLEY CROFT, ESQ.  
ANTHONY PAPROCKI  
ANDREW ROSE

**ASSOCIATE MEMBERS**  
RON LANDEN  
HEATHER ROMAN  
EMILY STUART

# APRIL 26, 2017 MEETING MINUTES

**Time:** 7:02PM – 10:38PM  
**Location:** Swampscott Senior Center, 200 Essex Street (rear)  
**Members Present:** M. Kornitsky, B. Croft, H. Roman, R. Landen, E. Stuart  
**Members Absent:** A. Paprocki, A. Rose, D. Doherty  
**Others Present:** James Dennis (Petitioner), Ernest DiMaio (architect), Chris Drucas (attorney), Christine Whitney (resident), Laura Migliore (resident), Dianne Toner (resident), Edith Harris (resident), Nick Weinand (petitioner), Marty Bloom (petitioner), Dana Robinson (engineer), David Haliotis (architect), Andrea Franklin (petitioner), Wellington Augusto (petitioner), Daniel Franklin (petitioner), Andrew Levin (Assistant Town Planner)

Chairman of the Board M. Kornitsky called the meeting to order at 7:02 PM.

M. Kornitsky explained that he will hold off on voting on the meeting minutes until more members of the Board are present.

## ZONING RELIEF PETITIONS

### PETITION 17-06

96 & 96A PURITAN RD

Attorney Chris Drucas introduced himself to the Board and explained he is representing the petitioner Jim Dennis (present), who has a Purchase and Sales agreement on the property in question, contingent on the granting of the special permits. Attorney Drucas also introduced Ernest DiMaio, the projects architect.

Attorney Drucas began the presentation by stating that the property in question (96 & 96A Puritan Road) is obviously familiar with the Board, and that the property is fully developed, and the two buildings on the property have been modified over time, as well, both buildings have existed prior to zoning and since, there have been several zoning and building documents issued on the property. Attorney Drucas then went through the history of the property, mentioning it was a medical office, but is not anymore, and that several building permits have been issued that allow the building to be in the condition they are in now. Attorney Drucas stated he wanted to address the “white elephant” in the room and explained that he believes the 55 years and up Independent Living facility use is one that the Swampscott 2025 Master Plan supports, as well as Director of Community Development Peter Kane, as well as the Town Planning Board. Attorney Drucas then turned the presentation over to architect, Ernest DiMaio.

Mr. DiMaio begins by showing multiple pictures on a presentation board that shows different points of the property. M. Kornitsky asked people in the audience, present for this petition to come forward to view the pictures and site locus if they wanted.

Mr. DiMaio explained to the Board what each picture shows. Mr. DiMaio explained the front building is a 2 ½ story wood frame, and the existing rear building is a 1 ½ story structure, with a inground pool surround by a fence with a gate, between the buildings. Mr. DiMaio stated there is an existing driveway and approach used by both buildings, as well as a large paved area and an abutting building behind it. Mr. DiMaio then referenced a sketch (previously handed to the Board, and made part of the record) of the easement. The Board and the petitioner clarify it is 2,100 sf. Mr. DiMaio continues by explaining more of what the pictures show. Mr. DiMaio explained the proposal brought before the Board, apart from parking and landscaping, excludes any changes to the footprint of the building. Mr. DiMaio continued that when the petitioner receives the right documents, then changes to the buildings will begin. Mr. DiMaio explained that most of the work is to be done internally, and that they wish to minimize the impact to the building, to keep its character and architectural style. Mr. DiMaio then showed the Board new plans reflecting the proposed changes to the site. The plans showed the conversion of the front building into a 2-unit, and having then the rear becoming a 3-unit. Mr. DiMaio explained that the buildings have have been operating in this way in the last few years, and that this proposal is going to convert the buildings properly. Mr. DiMaio explained there are four parking spaces in front of the front and back buildings. Mr. DiMaio stated parking will be added adjacent to Puritan Road, next to a retaining wall, which he showed on the photos. Mr. DiMaio stated the retaining wall extends down far enough, that with the plantings, the parking will not be very visible from the front. Mr. DiMaio explained the proposal is to retain the paved area, to which M. Kornitsky asked for some visual clarity. M. Kornitsky mentioned P. Kane's comments regarding the possibility of replacing some paved areas with grass or pervious materials, and M. Kornitsky asked the petitioner to consider this. The petitioner, Jim Dennis, explained that he has submitted an idea of a grass area, as well as proposing to heat the driveway, and add in pervious material where possible. M. Kornitsky read the comments from the Planning Board which mentioned certain areas were the petitioner could add more pervious material, such as in the front and rear parking area, which would benefit the wetland's. M. Kornitsky mentioned it could be something other than grass, but could compromise with something. Mr. DiMaio mentioned two parking spaces in the back will be new spots, and they have been looking at a type of paver made by *Unilock* which is a permeable paver, which will allow water to drain through it instead of creating run-off. Mr. Dimaio stated that he believes this type of material compatible with the site, and continued to explain there is potential consider that material for the parking area as well. Mr. DiMaio mentioned an idea in the proposal that is being looked at, is having several of the parking spaces being handicap accessible, which as Mr. DiMaio stated, would be appropriate for the proposed use. M. Kornitsky asked if there was enough space currently, Mr. DiMaio stated the proposal is for 1 to 2 spaces being handicap accessible and to be widened, and that the proposal is not adding any more pavement, but utilizing the space available for spaces 5 and 6.

M. Kornitsky mentioned that he is unsure on the requirements for handicap spaces and access, and asked if there are ideas for a ramp. Mr. DiMaio mentioned that there are none currently, and M. Kornitsky agreed, stating the property is private. Mr. DiMaio mentioned that there are two units at grade currently. M. Kornitsky asked if the pool is being kept, Mr. DiMaio stated it was. Board member, H. Roman asked about ideas to change the amount of paving. Mr. DiMaio explained the paved areas and the properties that it lies on, and agreed with a comment mentioned by H. Roman that much of the pavement is on the abutting property. M. Kornitsky mentioned P. Kane had comments about adding grass in areas to break up the pavement. Attorney Drucas mentioned that the spaces will be fenced in. M. Kornitsky asked the height on the fence, Mr. Dennis said 5 ft, and then explained the fences characteristics and showed the Board a rendering. Mr. Dennis stated that along the fence he wants to put plantings to break it up as suggested. Mr. Dennis stated that between Puritan Road and where the parking starts there is some nice landscaping, which Mr. Dennis stated is not part of the easement.

H. Roman asked about how the abutters enter the property, and if the existing fence prohibits it, Mr. Dennis mentioned there are two breaks in the wall for entrance. Mr. Dennis and Mr. DiMaio show the entrances on the map. Mr. DiMaio

mentioned that due to the distance between the two buildings and their proposed use, there needs to be parking towards the front, due to difficulty possibly faced by users of the property.

M. Kornitsky asked if there are any proposed improvements to the façade, Attorney Drucas replied that it is basically going to stay the same, Mr. Dennis assed that the windows will be changing, and possibly going back to the original. M. Kornitsky asked if they will be painting, Mr. Dennis replied they will be painting, and possibly re-doing the roof. M. Kornitsky agreed with the list of proposed improvements, and mentioned that the properties will need to look nice, to be marketed. Mr. Dennis stated that when he and his wife turn 55, “in a year or so”, they are going to move in. M. Kornitsky asked if the age restriction will be deed restricted, Attorney Drucas stated it would be, and that it will take time for the condo documents to be drawn up. Attorney Drucas mentioned that in the purchase and sales agreement his client has with the current owner, it says that it is going to be used for 55 and up. Attorney Drucas mentioned that they are also asking for waivers, Section 3.6.6.0, which allows waivers, because they are converting an existing structure to this specific proposed use. Attorney Drucas mentioned that they do not need a construction schedule, because there is not a lot of construction, or a development impact statement because it is already used for a residential, and that there is no need for a buffer zone, because there “really” isn’t enough space for a buffer zone. Attorney Drucas asked for the Board to grant the documents. Attorney Drucas mentioned Independent Living Facilities need one space per unit, which they have, and more. Attorney Drucas mentioned they will have it deed restricted, but prior to that having the condo units and place and sold, it would be a restriction that the the primary tenant needs to be 55 or older. M. Kornitsky asked if the unit owner needs to be over 55, but a spouse or a significant other can also live there, to which Attorney Drucas agreed, M. Kornitsky stated that is “fine”, Attorney Drucas stated that, this is what the state statue says. Attorney Drucas mentioned other issues involved are; getting approval from Town counsel for the condominium documents (which he mentioned could be made a condition), and that prior to selling the units, the documents will have been reviewed by the Town counsel. Attorney Drucas stated that he believes the Board should make findings after the plans have been presented, and hearing the presentation, to grant the site plan special permit and the use special permit. Attorney Drucas stated that this decision will be a benefit to the Town because it would take care of a pending court case the Town is involved in, and Attorney Drucas stated that he believed this decision would take care of that court case. Attorney Drucas stated the situation happening at the property has been ongoing for a while, and been created by actions of the previous owner, and the Building Inspector granting permits to allow these structures to be in the condition they are in now. Attorney Drucas mentioned that he believes P. Kane to be in favor of the petition, and Attorney Drucas mentioned it is a use needed in Town, according to the Swampscott 2025 Master Plan. Attorney Drucas then stated that he hopes the Board grants the petitioner their respective special permits requested.

M. Kornitsky asked what the surface material for the parking will be, and mentioned the possibility of using concrete squares with grass in-between, which would help put more grass in (like P. Kane commented), and the cement squares could provide support. Attorney Drucas mentioned that he believes they could do it for the back, but that it wouldn’t be visible from the front due to the fence. H. Roman mentioned that the request is not regarding aesthetics but issues with drainage, Attorney Drucas replied that it might not be good for the type of resident moving into the units to walk on. H. Roman mentioned that the front units are not handicap accessible, to which Attorney Drucas stated that he is unsure if that is the way the structures will end up. Attorney Drucas then outlined the possible plans that his client has for the structures. Attorney Drucas clarified that the plans shown, are showing what is there now, not what is being proposed. Mr. Dennis mentioned that it “most likely” the first floor will be one unit and the second and third be another. Mr. Dennis clarified what H. Roman was looking at on the plans. H. Roman mentioned that one unit will still be handicap inaccessible, and asked if there are plans to make it accessible, Mr. Dennis stated there is none. Mr. Dennis mentioned. In regards to the concerns about runoff, that there would be a four-foot border around the fence of landscaping that would help with run-off. Mr. Dennis mentioned that he is familiar with the blocks M. Kornitsky previously mentioned,

and stated that they might not look as nice (mentioned sparse grass spots) then the proposed pavers. Mr. Dennis then showed the Board a rendering of the pavers.

B. Croft asked if there are tenants living in the units currently, Attorney Drucas stated there are four, and Mr. DiMaio stated three in the back units, and one in the front. B. Croft asked if the tenants are at will or leased, Attorney Kenneth Shutzer (representing the current owner of the property) stated they are leased.

Mr. DiMaio went back to explaining the proposed pavers to be used and explained how they would be used. M. Kornitsky asked for clarification for a certain area on the site plan, Mr. DiMaio and Attorney Drucas both stated the area was not part of the property to be purchased by the petitioner. M. Kornitsky asked if the abutters own the property in question, Mr. Dennis stated there are three properties all owned by the same entity. M. Kornitsky mentioned there might be an issue, Attorney Drucas stated not with the existing structures. M. Kornitsky mentioned a certain area on the plan and proposed to take out some of the pavement, Attorney Drucas mentioned they cannot as it is not theirs, Mr. Dennis mentioned he has spoken with the abutters about the possibility.

M. Kornitsky then asked the Board for any questions. E. Stuart asked for clarification on the petition, Attorney Drucas mentioned is for a use special permit, and that they are not going to alter the outside. R. Landen mentioned they would need a building permit first, Attorney Drucas agreed. Mr. DiMaio mentioned much of the renovations will be internal, and they will vent the renovations through the Fire Department and the Building Inspector, and mentioned the buildings will have sprinklers in them. M. Kornitsky asked if sprinklers are required, Mr. Dennis mentioned he believes the back is required, but will find out from the Fire Department.

Dianne Toner, of 4 Sutton Place, stated she lives toward the back of the property, mentioned that her concern is over any new construction in regards to her current view, and asked if the petitioner is planning a garage. Mr. Dennis stated they are not, and mentioned he could work with Ms. Toner about tree heights. M. Kornitsky mentioned they could put up a fence, but mentioned the petitioner is not asking for any new building construction relief. Mr. Dennis and Attorney Drucas clarified the heights of the fence for Ms. Toner.

Ms. Toner mentioned that there is a new property, and mentioned that "supposedly" the owners are finding money to fix the issue, but that it causes problems with water, and that the back of the property floods, which is new. Ms. Toner mentioned the salt water has killed some of the vegetation on her property and in between the reeds, and mentioned mature trees are dying from the salt water. M. Kornitsky asked Ms. Toner to clarify, which she did and mentioned that the flooding can be fixed, somewhat. M. Kornitsky asked for more abutters comments.

Christine Whitney, 90 Puritan Road, an abutter, pointed out on the map of the property where her home is, and then asked how far her home is from the property in question. M. Kornitsky stated 5.2 feet. Ms. Whitney then stated she brought along an award from the Swampscott Historical Commission that she received regarding her house and mentioned she has spent lots of money on her home and on taxes. Ms. Whitney stated that she bought in a single-family neighborhood and wants it to stay single-family neighborhood. Ms. Whitney stated that the property was originally denied the ability to be designated as 5-units, but now the Independent Living Facility use will allow it to be. Ms. Whitney mentioned that no one 55 will come to an age restricted living facility. Ms. Whitney mentioned that the basement is ground level, and the first floor, is one floor up, and the second and third floors are higher. Ms. Whitney mentioned that she had previously heard at the meeting that this decision will help solve an existing court case. Ms. Whitney then explained that this is saying that if someone is to do something illegal, the Town sues them, and then grants permission, and all is fixed. Ms. Whitney mentioned that this does not bode well for those who follow the law.

Ms. Whitney mentioned the property was used illegally for a number of years. M. Kornitsky mentioned that pending litigation is not something he will consider in the review of the application. Ms. Whitney mentioned it is a single-family neighborhood. M. Kornitsky agreed and stated that by special permit by the Zoning Bylaw, Assisted/Independent Living Facilities are allowed. M. Kornitsky mentioned that the new owner wants something different than what the current owner previously requested. Ms. Whitney mentioned, it will be the same, but possibly the residents will be different. M. Kornitsky explained that the ZBA has a job to defend the Bylaw, which Town Meeting has adopted. Ms. Whitney stated that they have also said it is very important to maintain the neighborhood character. M. Kornitsky agreed, and then mentioned that the structure is staying the same. Ms. Whitney mentioned that the current structure on the property is in "terrible" condition. M. Kornitsky clarified Mr. Dennis's on the repairs they are proposing for the building, including painting, and mentioned Mr. Dennis is probably looking to make the property appealing. M. Kornitsky stated that he believes, Mr. Dennis to maximize his return on investment, will do a lot to make the property appealing. M. Kornitsky mentioned that materials have been discussed, to make sure they are pervious to help with run-off, as well as the expansion of the paring area to meet the requirements. Ms. Whitney mentioned that the parking is unattractive, and now they are proposing additional cars.

M. Kornitsky asked for clarification on the current parking, another audience member mentioned the parking at the Cashman's property. Ms. Toner mentioned where the cars are parked currently is the same as where they are proposed. An audience member and Ms. Toner then debated briefly where the cars are parked. M. Kornitsky asked the petitioners team where the cars are parked, Mr. Dennis explained that he lived in the back unit, and the cars in the front of the back building in the spaces marked 5 and 6. Mr. Dennis mentioned that only one person is living in the front house, so more people could park in that area.

Mr. Dennis mentioned the easement area, and that a fence and landscaping will break up the hot-top area, and that it is in his (Mr. Dennis) interest to make the area look nice, and mentioned that he wishes to paint the shutters immediately and then to paint the windows. M. Kornitsky clarified comments made earlier by Ms. Whitney. Ms. Whitney then asked if the units will be sold as condos, Mr. Dennis replied that they would, but that he would like to move into the second and third floor on the front building, and hoped if possible, to maybe keep the first floor as well, but sees that as being rented. Ms. Whitney asked for clarification if the units are being sold or rented. Mr. Dennis explained they would be selling the back units out completely and possibly renting the first-floor unit of the front building. M. Kornitsky then clarified the proposal, that in this plan there will be a restriction, recorded at the registry of deeds that provides that one of the owners or occupants of the unit needs to be 55 or older. Ms. Whitney then stated that the Planning Board recommended all the units be occupied by 55 plus, rather than the 80%. M. Kornitsky then clarified that he believed the Planning Board to have said that one hundred percent of the units be 55 and up be included in the deed restriction, if the applicants get their relief.

Ms. Whitney asked if the Director of Community Development lived in Swampscott. M. Kornitsky stated that he believes he does not, and then stated that it is not a requirement to have residence, and that P. Kane does a fantastic job and cares deeply about Swampscott. Ms. Whitney stated that she pays Swampscott taxes, that she wants to get something for her money, and mentioned "responsiveness". M. Kornitsky asked Ms. Whitney to clarify. Ms. Whitney stated that someone made a decision to allow this exception for this use to be allowed. M. Kornitsky clarified the "someone" was the elected Town Meeting, and then M. Kornitsky asked Attorney Shutzer when this was approved, Mr. Shutzer stated 2002.

Ms. Whitney asked if any other Independent Living Facilities have been approved, Attorney Shutzer and M. Kornitsky mentioned that one had been, M. Kornitsky asked where, to which Attorney Shutzer mentioned the general location of it.

Ms. Whitney asked if abutters have no rights, to which M. Kornitsky stated they have substantial rights, and mentioned the right to appeal decisions, and to make comments during the public hearing and be able to state evidence on why you believe they should not be allowed a special permit, as well as state why you think it could be substantially more detrimental to what is already there.

M. Kornitsky clarified for the other petitions that have been in front of the Board. M. Kornitsky mentioned that the new proposal is a plan that meets the interests brought up in the Master Plan, and is within Zoning law, which states Independent Living Facilities are permitted by special permit, and this is what the Town has spoken and stated should be there. M. Kornitsky stated that the law allows for single-family use or this proposed use by special permit as well, and that it is a matter of right for single-family, and special permit for this use. Ms. Whitney explained she has been at many ZBA meetings, M. Kornitsky stated this is the first hearing for this application, but that there have been other petitions with the previous owner. M. Kornitsky stated that the new applicants have come with a plan that meets the 2025 Master Plan, and is within the Zoning Bylaws as allowed by special permit, and that this is what the Town has spoken and said should be there. M. Kornitsky stated that by matter of right the property can be used as a single-family, and can ask for this proposed use by special permit.

Laura Migliore, of 145 Puritan Road, stated that her concerns with the property, including the property owners will not know who they are renting too, Mr. Dennis stated they will be very selective. Ms. Migliore mentioned she is concerned over the size of the street currently, and that it is very small, and this could present problems for emergency vehicles in the case of a fire. M. Kornitsky mentioned that the structure in the back will be sprinkled. Ms. Migliore mentioned more problems that could arise from because people park on both sides, and asked if a Police Officer would be present at the property, M. Kornitsky stated that he is unaware of any regulations that a police officer is needed for a 5-unit over-55 development. Ms. Migliore asked if Mr. Dennis would be selling the units and then leaving, Mr. Dennis replied that he, personally, will be buying the second and third floor of the front structure, to which Ms. Migliore stated that Mr. Dennis can sell to anyone he wants for the other units. M. Kornitsky stated that there would be condominium documents approved by Town counsel. Ms. Migliore stated that she disagreed, and stated that she was troubled by there being a multi-family and asked if there would be handi-capped accessible features.

M. Kornitsky stated that, if the problem is with what Town Meeting approved (the ability to get a special permit for an Independent Living Facility), then the issue is with Town Meeting, and explained Ms. Migliore can attend Bylaw review committee public hearings and make comments and address your concerns. Ms. Migliore then reiterated her concern with the increase in traffic this will bring.

B. Croft asked if the building is currently tenanted, the applicants team agreed, and Ms. Whitney stated from the audience “illegally”. B. Croft asked if the current tenants had cars, Mr. DiMaio stated they did. B. Croft also mentioned that the Fire Department has already received the petition and has weighed in on the petition with their comments. Attorney Drucas agreed, and mentioned that the Town Engineer had also weighed in on the project as well. M. Kornitsky then asked for more public comments.

Edith Harris, 62 Sculpin Way, stated her backyard abuts the property. Ms. Harris mentioned that she is putting her house on the market in the coming weeks, and was wondering how she is supposed to explain to potential buyers that there is a 3-family home behind the property, M. Kornitsky mentioned that he cannot give legal advice. Ms. Harris stated that she cannot lie to potential buyers. M. Kornitsky stated he is not telling her to lie to anyone and mentioned that if the relief is granted then an Independent Living Facility would be going in with five units, and this is what is permitted by Zoning, and explained that the arguably, if the buyer bought Ms. Harris’s property after the decision they could research the Bylaw and see it is permitted by special permit.

Ms. Whitney stated from the audience that the property is a terrible detriment. M. Kornitsky invited Ms. Whitney to run for the volunteer position of a Zoning Board of Appeals member if she has problems with what is being allowed.

M. Kornitsky asked for more public comments. Attorney Shutzer stated that he represents the property owners whom abuts the property, and whose property is encumbered by the easement (which was previously mentioned), and that his client, Millennium, is in favor of that limited issue.

M. Kornitsky asked for more public comment, which there was none, and then asked Attorney Drucas if he had any more to add, which he did not.

R. Landen asked in the parking areas, if adding additional fencing, will there be a landscape border, to which Mr. Dennis used a map to show R. Landen. R. Landen then asked for clarity, in terms of the abutters, and asked if there are abutters on both sides, Attorney Drucas stated there is. H. Roman asked for clarity regarding the proposed idea to paint the structures. Mr. Dennis stated that they wish to sell the back units first and then use that money to paint, and that the aesthetics will be decided with help of his fiancé. H. Roman asked for clarification on what is going to be done to improve the building, Mr. Dennis mentioned that he has spoken with Mr. DiMaio regarding some improvements. R. Landen asked if the idea is, that the footprint will stay the same. Attorney Drucas and Mr. Dennis mentioned the footprints of both buildings will stay similar. Attorney Drucas mentioned the internal footprint will change. The Board and Mr. DiMaio discussed the plans and the proposal, specifically conceptual ideas. Mr. DiMaio mentioned that they still need to go through a vetting process with the inspector, and that the plans are not final drawings, but conceptual. Attorney Drucas stated that it did not make sense to get condominium documents, without the approval first.

Mr. DiMaio mentioned that the proposal needs zoning approval before changes will be made. The Board and Mr. DiMaio continued to discuss the plans, and explained Mr. Dennis plans to live on the property so he will look to make a substantial investment in both buildings, and going to want it to be nicely done. E. Stuart asked for clarity regarding parking. Ms. Whitney from the audience asked how long the apartments are to be rented for, and if they will still be rented under the same pretenses, as they currently are. Attorney Drucas stated that if they receive the use special permit, they will not be rented illegally. Attorney Drucas and the abutter briefly discussed. Ms. Migliore asked how the petitioner plans to fix the structures if residents are still living in them. Mr. Dennis stated they could begin with the exterior, and work on the interior depending on the timeline, Attorney Drucas explained that there will be turnover, and when unit's turnover, the applicant will work on them. Ms. Whitney asked if a unit that currently has blankets on the windows could remove them. R. Landen mentioned that he presumed there will be a condo association, to which Attorney Drucas agreed. Ms. Whitney from the audience asked how long the condo documents will take to get, Attorney Drucas mentioned a couple of months. H. Roman asked for a time-frame for the project as well. Mr. Dennis stated that he wishes to sell the back units as soon as possible, and within the year, start living on the 2<sup>nd</sup> and 3<sup>rd</sup> floor of the front building. Mr. Dennis then reiterated that he will need the money from the back units to improve the front, Attorney Drucas reiterated that the timeframe proposed is a year. Mr. DiMaio mentioned the process for converting the interiors will be the same as any other architecture project, and that there is a design period, and review periods could take a while. H. Roman mentioned some requirements for occupancy, and asked about the Fire Department requirements that need to be done before people live there, Attorney Drucas agreed.

Attorney Drucas stated that there are existing leases that they will have to deal with and terminate. B. Croft asked if the petitioner expects any noise issues during construction, Mr. Dennis mentioned the structures will be sprinkled immediately, and was unsure about noise, and mentioned that he does not know the timeframe. Attorney Drucas mentioned things that need to be done to comply with the building code, Mr. Dennis mentioned windows and exterior could be improved. B. Croft asked if there is any expected increase in pedestrian traffic, Mr. Dennis replied that it will

pretty much stay the same, but now he (Mr. Dennis) will be living on the 2<sup>nd</sup> and 3<sup>rd</sup> floor in the front structure, and that potentially ¾ of the current residents on the property, probably will stay.

M. Kornitsky asked the current distance from space number 5 to the lot line, and B. Croft asked if the distance is greater than ten feet, Attorney Drucas agreed it is, and Mr. Dennis stated it is more than nine, and then looked at the map and stated that it looks like 12-feet. M. Kornitsky asked what type of vegetation would be planted and how it would screen this space, Mr. DiMaio showed on the maps the current fence that screens the spaces.

The Board then discussed the maps and plans. M. Kornitsky then asked if there are any more questions.

Ms. Whitney from the audience asked for a limit on the time it will take to get the property ready for market. M. Kornitsky mentioned a typical time-frame on construction, but mentioned that for this proposal, the construction is internal. M. Kornitsky stated that for external construction, limits can be imposed to cut down on issues, but mentioned since the work is internal, he did not think limits were relevant. M. Kornitsky mentioned that he wonders about the condo documents and deed restriction time-frames. Attorney Drucas mentioned they are asking for 3 months to get then, Mr. DiMaio agreed. Attorney Drucas stated that as soon as the petitioner buys the property they will see the deed restriction. B. Croft asked if there was any environmental problems or harms, Attorney Drucas stated that the petitioner will not be exacerbating existing conditions, and only will be making the drainage better, with the addition of permeable pavers.

An audience member stated that the property has asbestos, and that if there is no time-frame then the buyer (the petitioner) can continue to rent. M. Kornitsky explained the relief the petitioners are asking for, and mentioned that in terms of use, if the abutters see that it is not being used correctly it is up the Building Inspector. M. Kornitsky stated that if the property meets the requirements that the residents are over 55, and other requirements, such as the ones from the Fire Department, and that all of these need to be met before occupancy.

Ms. Harris stated that she is afraid her property will not sell because there is a legal 3-family behind the home. Ms. Harris mentioned her concern is misleading potential buyers. H. Roman mentioned to Ms. Harris that it might be better to call it an over 55 property.

Ms. Whitney mentioned another alternative, and that the property could become a conforming structure, and then Ms. Whitney mentioned that the residents pay their taxes to live in a beautiful neighborhood, instead of next to an "illegal multi-family". M. Kornitsky stated that if the permit is allowed then it wouldn't be illegal, Ms. Whitney mentioned that it has been illegal, M. Kornitsky agreed, and mentioned the ZBA previously determined that.

M. Kornitsky explained that an Independent Living Facility use is allowed by Special Permit in every neighborhood in Swampscott in A1, A2, or A3. Ms. Whitney responded that there have been no others built, to which M. Kornitsky stated that one was approved, and the use is still permitted. M. Kornitsky explained that this use is allowed by anyone in the Town, by special permit as Town Meeting permitted. Ms. Whitey stated this is making Swampscott less desirable, M. Kornitsky explained this is what Town Meeting decided and then explained what the special permit allows. Ms. Migliore then stated that Mr. Dennis should start all over and fix the property.

M. Kornitsky moved to close the public hearing, then asked the Board members if they had any thoughts on the Bylaw.

E. Stuart mentioned the comments made regarding flooding, M. Kornitsky asked if the Board believes pavers should be required. H. Roman then mentioned her thoughts on the flooding and proposed ideas, and mentioned it would be nice if one of the units was handicap accessible.

B. Croft asked M. Kornitsky if the public hearing was closed, M. Kornitsky explained that it is not.



B. Croft then explained what the differences are between Independent and Assisted living facilities. B. Croft mentioned that it would be nice to have wide handicap spaces, but that ramps are usually more for assisted living facilities. H. Roman mentioned that lots of Independent Living Facilities are accessible and described some hypothetical buyers. Mr. Dennis mentioned that the first-floor units in the back structure are at grade and are flat, and described the front structures accessibility, and the internal design of the unit. R. Landen mentioned some concern regarding adding ramps to the property and mentioned that he believes that the property owners would not have to put in a lot of ramps.

M. Kornitsky then moved to close the public hearing again, B. Croft seconded, the public hearing was closed.

MOTION : by M. Kornitsky to approve the use special permit and site plan special permit for an Independent Living Facility pursuant to Bylaw 3.6.0.0, through the conversion of the existing structure. Which there on, in an accordance with the plans that have been filed and stamped by the Board, if approved. The applicant should file a proposed deed restriction and condominium documents with the Board for review and approval by Town Counsel as a condition of the relief. The findings made by M. Kornitsky that he requests to be made by the Board, include: that the proposed Independent Living Facility will not cause substantial detriment to the neighborhood, and after hearing public comments on the concerning factors, the applicant should consider noise during the construction and that construction mainly be done to the interior and that traffic will not become detriment from the allowed use in this district, and that the environmental harm will be improved by the addition of permeable pavers in parking area spaces indicated as 1-4, 7 and 8. That fencing that will be constructed done around parking spaces 1-4 in the easement areas meet the requirements of 3.6.7.2 in lessening the visual impact of the character and scale of the proposed parking area. That the use of the existing structure minimizes the removal of the structure, and to preserve the structure and the structures architectural elements that currently exist, pursuant to 3.6.7.3. That the requirements of 3.6.6.0 the applicant is encouraged to convert buildings that are no longer suitable for their existing use, and to permit the re-use which is compatible with the character of the neighborhood and to take into consideration the public interest as suggested by the Town Master Plan of 2025. Furthermore, the applicant as a condition, before the conveyance of any unit, be required to paint the front building, that the applicant would address any environmental harm encountered in accordance with local, state, and federal law. That the rear and front building be equipped with whatever fire protection equipment recommended by the Swampscott Fire Department. That the parking requirements for an Independent Living Facility are met with what is shown on the plans. That the requested waivers be granted for the development schedule for construction, development impact statement and a buffer zone, in 3.6.5.2, which is appropriate given the proposed use. Seconded by B. Croft, unanimously approved.

**PETITION 17-08**

410 HUMPHREY ST

M. Kornitsky calls forth petition 17-08, 410 Humphrey Street, an application by Amy Brackman seeking a special permit for an already installed secondary sign on the second floor of the structure. Ms. Brackman prior to the meeting had signed a continuance form.

MOTION : by M. Kornitsky, seconded by R. Landen, Petition 17-8 was moved to the May 23<sup>rd</sup> meeting.

**PETITION 16-06 AMENDMENT**

55 BERKSHIRE DR

M. Kornitsky calls forth petition 16-06 Amendment, an application by Tariq Milton seeking to amend previous special permits to build a new front brick steps/stairs platform, 6’ x 25’ front entry with brick and stone, and new bulkhead stairs.

M. Kornitsky mentioned that he received word that an abutter could not make the meeting, and was hoping the applicants would continue to the May meeting. M. Kornitsky asked if the applicants had spoken with the abutter, Gail Rosenberg. Mr. Hailiotis the project architect stated that he had been playing email tag with Ms. Rosenberg and that he is fine with continuing to the next meeting.

MOTION : by M. Kornitsky, seconded by B. Croft, unanimously approved to continue Petition 16-06 Amendment to the May hearing.

**PETITION 17-02**

48 FARRAGUT RD

Petition 17-02 is an application by Nick and Melissa 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 a new curb cut.

Mr. Weinand was present and began by handing the Board updated drawings. Mr. Weinand explained the new plans show a shortening of length and narrowing of the garage, achieves the 10-feet of separation required. Mr. Weinand also got a certification of appropriateness from the Historic District, and the 20-day appeal period associated with that has passed. Mr. Weinand used the new drawings to show the change, and that there is now 10-feet of separation from foundation to foundation, along with some other small modifications. M. Kornitsky asked if the Historic District approved the revised plans, Mr. Weinand mentioned they had not, but that if he was to receive approval tonight, then he will go before the Historic District again, but that he sees it passing because they have already vetted the materials, and the only change will be in the footprint. M. Kornitsky asked if the setback on the side-yard is still at 2.4 feet, Mr. Weinand agreed, M. Kornitsky then asked if it is being made better and if the change to the rear of the garage is 5-feet, Mr. Weinand agreed. Mr. Weinand mentioned it won’t be totally square given the foundation. M. Kornitsky asked if the proposed garage will be built on the existing foundation, Mr. Weinand mentioned that the garages foundation would be rebuilt, because there is a large tree near it, whose root structure eroded the foundation, the current is crumbling and the current garage is falling in on itself.

The Board then continued to review the plans, then M. Kornitsky asked if there were any comments.

Joan O’Neill, 58 Farragut, mentioned that she has lived in Swampscott for 57 years, and 32 of those on Farragut Road. Ms. O’Neill stated that she is happy to have the Weinands in the neighborhood. Ms. O’Neill mentioned that the Weinands have done wonders, and that the neighbors and abutters love them. Ms. O’Neill mentioned that she doesn’t believe the Weinands would do anything to the property that would not make the neighbors happy.

There were no other public comments, M. Kornitsky asked if the Board had any questions.

R. Landen asked if the neighbors, who’s driveway will abut the proposed new driveway are in favor. Mr. Weinand mentioned that he had spoken with other abutters as well and that they were all in favor, and that they had worked with the abutters reviewing the plans throughout the process. M. Kornitsky cautioned that the plans need to be certified, Mr. Weinand stated that the plans are certified, that after the revisions were made, the plans were re-certified.

B. Croft asked dimensions for the new structure. Mr. Weinand mentioned the extension is going to be 8' x 14', and then showed the small extensions that make up that 8' x 14' area.

M. Kornitsky moved to close the public hearing, seconded by R. Landen, unanimously approved.

**MOTION** : by B. Croft to approve Petition 17-02, 48 Farragut Road, the application seeks a special permit to demolish and rebuild a condemned detached garage, adding an extension to it which will have a finished dimension of 8' x 14', that the allowance of the petition would be subject to the petitioner going back to Historic and subject to any and all conditions which Historic may impose on the petitioner. That the project be built in accordance with the plans as presented, and that the existing driveway, presently on Ellis Road be eliminated and the curb cut on Ellis Road be no longer used as a driveway or an egress once the new driveway is completed, seconded by R. Landen, unanimously approved.

Mr. Weinand asked the timeframe on when special permits expire. After a brief discussion and clarification between the Board, M. Kornitsky mentioned that the applicant must make substantial use of the Special Permit within three years.

#### **PETITION 17-04**

141 HUMPHREY STREET

Petition 17-04 is an application by Swampscott Associates, LLC seeking a special permit (nonconforming use/structure), special permit (signs), and a site plan special permit. The applicant is seeking amendments to the 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 that will temporarily enclose a substantial portion of the roof deck and a permanent structure for the enclosure that will remain on the deck permanently.

Attorney Chris Drucas was present and representing the petitioner. Attorney Drucas mentioned that there are some small issues that the petitioners want to address and clarify before getting into the structure portion of their relief. Attorney Drucas mentioned what is provided to the Board, including a plan for the signs for the Cove, the sign for the menu, which is 2.5 feet by 5 feet. M. Kornitsky asked for clarification on what he was looking at.

M. Kornitsky asked if the order/pick-up window arrangement could be switched, Attorney Drucas mentioned that because of the way the kitchen is designed. Attorney Drucas mentioned that pick up is on the left and that patrons order on the right, and Attorney Drucas mentioned Community Development Director, Pete Kanes comments on the area. Attorney Drucas mentioned that the kitchen door has been painted to match the building, and that horizontal siding was used to hide the mechanicals on the roof. Attorney Drucas mentioned that in regards to the request for more plants. Attorney Drucas stated that they could not find a place to put flower boxes, but in the front of the property near the flag pole, they have created a landscape area, but nothing in front, on the Humphrey Street side, Wellington Augusto (applicant) mentioned the flower boxes are near the patio. M. Kornitsky asked about signage, mentioning the signs for the Cove look good, but wondered about the menu, and asked for a larger picture of it, as well if it was interchangeable, to which Mr. Augusto mentioned it was not changeable and there would be fixed panels and sorted and locked, and then showed the Board a rendering, and mentioned the board will be "beachy" and match the building, and the board will age, and only have a 3 inch depth, with little border showing, and the front will be glass so it will not be anything obstructive. B. Croft mentioned that there is nothing of interest on the side, that there is a giant blank space under the Mission on the Bay sign, and that only one point-of interest there visually, it does not concern him. B. Croft asked P. Kanes exact concerns, and then mentioned there is nothing playful on that building at all other than the one sign, ad mentioned "frankly it's a walk-up ice cream". M. Kornitsky explained that P. Kane thought it should be located on a

different side. M. Kornitsky then said that practically their kitchen is set up differently. B. Croft mentioned he didn't see the difference that would make.

R. Landen agrees with B. Croft's thoughts. M. Kornitsky stated that aesthetically, you would see it differently entering Town. B. Croft mentioned the only time you would see it, would be going down Reddington.

M. Kornitsky asked if there is the ability to take the menu down on the off-season, Marty Bloom (applicant) mentioned there is, Mr. Augusto mentioned the sign is very heavy, and if removed there would be large brackets there. M. Kornitsky asked if they will just be mounting using brackets, Mr. Augusto stated that there will be a PVC panel to protect from water, and then screw the frame into the building, Mr. Augusto mentioned they don't want the board to fall on anybody. B. Croft asked if the sign will be trimmed in black, Mr. Augusto replied that it will be in "yippe" wood which will age, M. Kornitsky clarified he is familiar with this type of wood, and that it will turn grey overtime. Mr. Augusto stated it will be an inch and a half on each side, bottom, and top, and a three-inch depth, and the board will open from the bottom up for maintenance.

B. Croft mentioned that certain span on the building would need something. M. Kornitsky asked the size of the signs, Attorney Drucas stated there will be two signs 2.5 by 5 feet. M. Kornitsky asked what will be above those signs. Mr. Augusto showed a digital rendering of the signs. E. Stuart mentioned that the rendering is very colorful and believed it would be out of place, but also mentioned she understands why it would be colorful, and then reiterated that it looks out of character. B. Croft mentioned that he disagreed, and mentioned that across the street there is a kaleidoscope of color. B. Croft mentioned that the structure is different, but believes the sign to be compatible, even if it is different. R. Landen mentioned the signs of the area are part of trying to make the signs more consistent, and that the only using a primary and secondary color, could be more compatible. R. Landen then mentioned previous discussions about Humphrey Street signs.

R. Landen mentioned that the Cove sign is compatible, but made a point that the menu board is a menu, but also a sign, and mentioned some of the issues that could come from approving it, especially for future sign applications. R. Landen mentioned the Board needs to discuss if this is a detraction from trying to stay consistent with signs.

Mr. Augusto asked that during the offseason a banner could be placed of the sign, in black and gold, that could have different things on it such as "book holiday party's", and that the interior sign could switch too because it is removable. E. Stuart asked if meant switch the interior seasonally, Mr. Augusto agreed. Attorney Drucas clarified that the sign is in a case, Mr. Augusto stated the sign is removable. Attorney Drucas then clarified that when the Cove is not opened to serve food, the sign could potentially be removed and something black and gold in color could be put there. Mr. Bloom mentioned a current sandwich board with their menu on it that they place in front of the restaurant daily.

B. Croft mentioned the signs proportions, R. Landen mentioned the size and the location are fine. H. Roman mentioned that it will be a lot of color. Mr. Augusto showed the board a digital rendering of the sign in only one color. Both H. Roman and E. Stuart mentioned that they like it. R. Landen mentioned that the location is a classy establishment, and that usually when you go to a classy place there is not lots of color, and then R. Landen mentioned he agreed with the iteration with one color. Mr. Augusto asked if a second color is ok, and Mr. Bloom mentioned that this business is totally different than the restaurant. E. Stuart mentioned the first iteration had many colors.

B. Croft mentioned a potential colorway and solution. Mr. Augusto asked if the sign could be other colors than black and white. R. Landen and H. Roman asked if the sign will be lit, Mr. Augusto mentioned there are plans to light it.

H. Roman asked about the tables in front, for people to sit on, Mr. Bloom stated the tables will remain. Mr. Bloom also mentioned the clientele between the Cove and the indoor restaurant are different, to which B. Croft agreed, Mr. Bloom mentioned the Cove was very casual. Mr. Augusto showed the Board different color ways.

H. Roman mentioned the white background of the sign makes it easy to read. The Board then discussed some solutions for the colors on the signs. Attorney Drucas asked for some clarity on what the Board wishes to see, M. Kornitsky asked if for the square-footage on all the signs. Attorney Drucas mentioned that there would be a total of 32 ½ feet of new signage. M. Kornitsky asked for clarity on each sign's size, Attorney Drucas mentioned two Cove signs equal 20 feet, and the menu is 12 ½ feet. M. Kornitsky asked the dimensions of the main sign, Mr. Augusto clarified the sizes of the signs, 2 foot 10 by 14 and 2 foot 10 by 16, and clarified that one faces East and other faces the West. M. Kornitsky asked Attorney Drucas if the signs require a special permit, Attorney Drucas stated they did, M. Kornitsky then asked if the petitioners have considered a projection sign, in lieu of one of the signs. M. Kornitsky mentioned, not the menu sign, but one of the others, and that this could add visual interest, Mr. Bloom asked for clarity. M. Kornitsky clarified he meant a sign that stuck out from the building, Mr. Bloom mentioned they had not thought of that. Attorney Drucas asked if the Board does not want the two Cove signs. M. Kornitsky stated that the sign would be visual for people driving by in the location he pointed out. Mr. Bloom mentioned that is the most important one. M. Kornitsky mentioned it would give a little more interest. M. Kornitsky mentioned that if you had the projection sign and a regular sign, B. Croft asked if M. Kornitsky meant a back to back sign, M. Kornitsky agreed, B. Croft mentioned you would have to count one side of that. M. Kornitsky stated they are already over, and have already got relief, M. Kornitsky then clarified his idea. M. Kornitsky clarified the allowed dimensions.

Mr. Augusto asked how far the sign would stick out, M. Kornitsky mentioned that it would have to be over 7 ½ feet above grade, and not extend more than three-feet from the building. Mr. Augusto asked for more clarity, M. Kornitsky stated that the sign can't extend out over three-feet, representatives with Mr. Augusto clarified for him. B. Croft mentioned the possibility of an awning sign, M. Kornitsky mentioned that it is permitted, but that he would want to see the awning design first. M. Kornitsky went on to say that he likes the two signs, but it is the menu board he has concerns with and explained his concern, and why he would like to see a projection sign. Mr. Bloom stated they can live with that, as long as their sign on the main side is seen. M. Kornitsky stated that he is ok with one of the designed signs the applicants are showing and then in the area where it is busy because of the multiple signs, placing a projection sign. M. Kornitsky stated that people driving by either way could see it. Mr. Bloom showed on the map the sign that he believes to be the most important. The Board and Mr. Bloom discussed possible sign placements.

R. Landen asked if the menu board needs to comply with the sign regulations regarding lettering. B. Croft mentioned that if you look at the definition of a sign then it is.

B. Croft mentioned the menu fits the definition for a sign. M. Kornitsky mentioned some past petitions that were similar. E. Stuart asked if it is a temporary sign, M. Kornitsky then looked at the sign language. B. Croft mentioned there is no definition for a menu. The Board then discussed the language of the sign bylaw. H. Roman mentioned it is a sign that cannot follow the sign guidelines.

B. Croft mentioned that he does not think the projection sign will in regards to the height it needs to be off the ground. M. Kornitsky mentioned another location for the sign. B. Croft reiterated the height concern. M. Kornitsky mentioned that the new spot looks high enough, and that if the petitioners need further relief they can come back before the Board. H. Roman mentioned that they cannot give relief for lowering the sign. M. Kornitsky thinks they will be ok with the height. R. Landen asked if the Board can grant relief for a sign that isn't black and gold. B. Croft asked what they can do without a menu board, M. Kornitsky stated they would hand out menus, which both Mr. Bloom and Mr. Augusto stated was difficult last year.

The Board then discussed some potential colorways as well as the relief to grant. M. Kornitsky asked if B. Croft is concerned sign language is mandatory, he agreed. B. Croft asked if the property is in a B1 district, Attorney Drucas agreed. Mr. Bloom asked if they could do something temporarily, like a banner. Attorney Drucas mentioned the language of seasonal signs, H. Roman mentioned that it also states for the celebration of a holiday. Mr. Bloom mentioned again the possibility of a less permanent sign there.

H. Roman stated that she wants there to be a high-quality sign there, Mr. Bloom agreed. M. Kornitsky asked if anyone in the audience wished to heard regarding the signs, there was no one.

M. Kornitsky asked if they should bifurcate the petition and deal with the signs or do the whole petition. Attorney Drucas mentioned that they should bifurcate and do the signs first, M. Kornitsky agreed.

M. Kornitsky explained then the next steps, keep the public hearing open, have discussion about the signs, and then have a motion after they would look to ratify the motion as part of any relief provided or denied with the remainder of the application. M. Kornitsky clarified that they will say what they will do, then ratify it at the end with the final motion for the petition.

B. Croft asked for more clarification, M. Kornitsky explained his proposal again. Attorney Drucas asked for more clarity regarding colorway on the signs.

M. Kornitsky mentioned that there needs to be more discussion amongst the Board first, and then mentioned what P. Kane had suggested, but that he had made no mention of color, just of location. Mr. Augusto approached the Board and showed them another iteration of the sign.

The Board discussed potential signage. M. Kornitsky mentioned that he is looking for signage that is consistent with what the Town and applicant wants. E. Stuart asked if the signage is to be used inside, the Board clarified it is for outside. B. Croft mentioned a sign within a window is not a sign, M. Kornitsky asked if he meant recess it, and then explained it would still be a sign, and the signage cannot be in windows, B. Croft stated you can and the explained the regulations in the Bylaw. Mr. Augusto explained structurally he cannot recess it. R. Landen asked for clarification, and the Board and petitioners discussed the sign and its materials.

Mr. Augusto and M. Kornitsky discussed and explained what the sign is made out of. M. Kornitsky asked if it will be blank when the menu is not in it, Mr. Augusto stated that it will just be nice wood. M. Kornitsky and Mr. Augusto continued to discuss.

M. Kornitsky asked if the menu will stay the same, Mr. Bloom and Mr. Augusto both said once the sign is up, the sign will stay up. R. Landen made a recommendation of making the border gold colored, and M. Kornitsky mentioned they could try and blend it. Mr. Augusto mentioned that they could make it black and white, and showed a digital rendering of this proposal, and agreed to making it black and white. R. Landen asked if this could be something like a sunset clause, and M. Kornitsky explained the idea could be that Board and public would be able to see the sign for a certain length of time and comment on it, and then the applicants would come back before the Board. M. Kornitsky mentioned that it might not be a bad idea. Attorney Drucas and the applicants agreed.

M. Kornitsky asked the Board if they had any more questions, there was none.

M. Kornitsky stated the motion will be to approve the petition in terms of signage, that the side furthest to the left to have a projection sign permitted which is allowed in the Bylaw, above the take out menu. To permit the materials supplied except the menu is in black and white, and there is a sunset, where the petitioners would need to come back at a meeting February or March.

H. Roman asked for the applicants comments, they replied they were fine with it. Mr. Bloom mentioned a comment about the projection signs and where people will be drawn. M. Kornitsky mentioned that there could be the reverse for the signs, (ie; one projection sign on a side and a traditional on the other, or the reverse), M. Kornitsky explained one of the two signs can be a projection, and one as shown.

H. Roman, E. Stuart, B. Croft and R. Landen said they liked the original design. R. Landen made a point earlier that the menu is a sign, and that B. Croft is worried, and mentioned that R. Landen made a point earlier that the menu is a sign, and is worried about the menu conforming. B. Croft asked how the Board is going to look at the bylaw.

R. Landen mentioned that one reason for the sunset clause could be to see how the sign looks with the restaurant, and mentioned the concern is that the Bylaw did not think of this situation, and the issue is, is the Board going against the Bylaw or filling in white space in the Bylaw. B. Croft mentioned his personal feelings regarding the bylaw and what the Board is doing. M. Kornitsky mentioned they need four votes, and explained what his motion is. M. Kornitsky asked if there are four votes, H. Roman, R. Landen and E. Stuart and M. Kornitsky mentioned they are in favor. The Board and the petitioners discussed the what possible revisions could be made to the sign code for the future.

The Board discussed what will happen from here, as well as what the Bylaw says and does not say.

M. Kornitsky then moved on to the awning.

M. Kornitsky asked if he was looking at the correct iteration of the proposed awning. The projects engineer, Dana Robinson explained what the pictures show. R. Landen asked the type of materials being used, Mr. Robinson stated it would be canvas with windows. Attorney Drucas mentioned the back wall, as an option, can be left up in the winter, Mr. Augusto then showed a rendering of this. R. Landen asked if the walls are beige and roof will be grey, H. Roman mentioned the renderings make it look like it is all one color, B. Croft mentioned it looked like it is grey. R. Landen mentioned that it looked better than the originally proposed blue, H. Roman and M. Kornitsky agreed. B. Croft asked if there are windows at the top of the eaves, Mr. Augusto and Mr. Robinson clarified. B. Croft mentioned the new renderings look “a hundred times better”, and mentioned that nothing about it offends him. M. Kornitsky asked for clarification on what the structure and deck will look like during the winter. Attorney Drucas mentioned that the back panels can be left up, which are on the side facing Humphrey Street and the Athanas property. M. Kornitsky asked how much of the deck is left open, Mr. Bloom stated 60% close, 40% open. Attorney Drucas and Mr. Bloom use the pictures and map to clarify where the walls and windows will be in regards to the proposed structure. Attorney Drucas stated the deck is roughly 2,350 and 3,800 square feet.

E. Stuart asked for clarification on the part that remains when not in use, R. Landen asked why they are using temporary material, the applicants reply it is permanent material. H. Roman mentioned that it is canvas, the applicants agreed, and then H. Roman asked why not shingles, Mr. Bloom mentioned due to the type of structure.

Mr. Robinson mentioned that the grey roof matches the shingles on the building, but that they possible could make it a slate fabric that matches the façade, if the applicants want. R. Landen mentioned that if looking at the building, some pieces seem permanent and some seem retractable, and asked why not make it all permanent and consistent with the materials on the building, and only limit the non-permanent elements. Attorney Drucas used the renderings to explain and answer R. Landen’s question, Mr. Robinson added some clarification too, that it’s difficult to add a mechanical canopy in there.

Attorney Drucas mentioned that the structure can be taken down, but it will be used to hide the framing, and that it will not blend into the roof with the grey coloring. Mr. Robinson showed some examples of the renderings with different

colors. Attorney Drucas mentioned hiding the materials up top helps. M. Kornitsky asked for clarity on the relief they are seeking.

M. Kornitsky mentioned that this is clearly a structure, and that it needs a special permit to expand the structure, and asked if the applicants need dimensional relief. Attorney Drucas replied they do not, as they are not changing the footprint.

M. Kornitsky asked for more clarity on the side of the structure, and asked if it could be more permanent. Mr. Augusto showed that there would be windows and clarified that side.

The Board then continued to discuss the petition, Attorney Drucas mentioned that further discussion with the Fire Department found out that there is no way to have this structure without it being sprinkled. Attorney Drucas mentioned that this is what is creating the issue regarding the permanence of this structure. Mr. Robinson mentioned that it had to be engineered specifically for the weight.

M. Kornitsky asked for more comments, there was none. M. Kornitsky then asked for questions from the Board.

E. Stuart mentioned the new color scheme is improved and that it blends in with the whole building. M. Kornitsky asked what the useful life on the materials is, Mr. Robinson stated the canvas can last for 10 years, and the structure is a lifetime. M. Kornitsky asked if the proposal will be for year-round use now, Attorney Drucas mentioned they will not be using it year-round. M. Kornitsky asked if extending the timeframe from Spring, Summer and Fall, the applicants stated they are staying the same, but looking at booking from around April 15<sup>th</sup> to November, M. Kornitsky said the concern is the aesthetics, especially the skeleton, but mentioned the skeleton view would now be eliminated.

Attorney Drucas mentioned that the petitioners originally requested to have entertainment till 12 pm but now it is 11pm, and M. Kornitsky agreed that request is closed. M. Kornitsky mentioned the entertainment relief is probably less intrusive than what is being covered. H. Roman asked if the tent will go over the kitchen, Mr. Augusto stated it would not. H. Roman asked why the tent has to be so tall on one side. Mr. Augusto clarified and explained.

M. Kornitsky asked if it is so tall so it can get over the bar, Mr. Robinson agreed. Mr. Robinson and a member of the applicant's team said it also is at that height because of the structural support, Mr. Bloom added that the structure needs to be structurally sound to deal with winds.

Attorney Drucas and M. Kornitsky briefly discussed the structure. The Board then discussed possible recommendations of making changes to the structure and possible reiterations to the rood. Mr. Augusto and Mr. Robinson clarify to the Board the characteristics of the structure. M. Kornitsky mentioned a possible recommendation, and asked if the structure could be set back. Mr. Robinson mentioned even if the structure had an even roof, it would still be seen. M. Kornitsky mentioned that the Board protects street views and asked if the view of the structure from the street can be mitigated, because as M. Kornitsky explained, he is concerned that if it is allowed, they will come back and say they can build a wall. Mr. Bloom mentioned that if they get it approved as is, they have been very open to working with them, but if something needs to change then they can come back. Mr. Bloom mentioned that they can put it up, and if something needs to change then they can come back. Mr. Robinson mentioned that they could modify the structure to put in a permanent wall, and show this if they come back in February. Mr. Augusto clarified with the Board on what the wall could be. Mr. Bloom mentioned that time currently is of the essence to getting the structure usable for their upcoming season. M. Kornitsky mentioned that they are deciding on something that is permanent, and asked if the applicants understand the sunset clause and the potential consequences it can have, Mr. Bloom and team stated they did.



Mr. Bloom mentioned that the group would be open modifying the structure, but would have comfort that the structure is usable, even if, it is under a sunset clause. Mr. Bloom stated that as the structure is used and seen and as the summer goes on, there will be conversations and if something needs to be modified then they can talk about it. M. Kornitsky mentioned that he is “OK” with the sunset clause and the applicants coming back. M. Kornitsky then clarified that there is the potential the relief granted could be revoked and that this could include more than just modifications.

M. Kornitsky did mention that he likes the ability, that this project could be modified, at the end of the sunset period. M. Kornitsky and Mr. Bloom discussed some of the things and areas that potentially could be modified if the applicants were to come back.

M. Kornitsky asked the Board for their thoughts.

E. Stuart explained that she thinks the sunset seems fair, and believed the rest of the restaurant looked beautiful.

H. Roman stated that she would like to see parts of the structure that would not be removed, be made to look more permanent. H. Roman then went on to say that from the renderings she can see that it will look nice. H. Roman mentioned that canvas areas, that are not being removed, should look like the building, M. Kornitsky agreed, and mentioned that is something to look at, during the sunset review.

R. Landen mentioned that he is “torn”, but is leaning in the direction of voting to allow the structure. R. Landen went on to mention that he likes the ability that the sunset clause allows for, and that the renderings provided were nice, but the Board will need to see the structure when it is up.

M. Kornitsky mentioned that the Board could provide notice, and schedule times to view the structure when it is put up.

B. Croft stated that he believes the structure looks better than it did before (the new renderings) and he is comfortable with the sunset clause, and thinks it will be a good conversation, and then mentioned that he likes the overall idea of the proposed use of the structure. B. Croft mentioned that he is a little sensitive with the approach, because this property is the Town’s beacon and gateway into Town. B. Croft went on to mentioned that if the structure looks different then what they think it is going to look like, then they will be hearing from many people. Mr. Bloom responded that he is open to ideas and getting this project accomplished.

M. Kornitsky then moved on and asked Mr. Augusto about the trash issues that were brought up by the Planning Board (during the applicants site plan review), and at the previous meeting. Mr. Augusto stated the problem is 98% fixed. M. Kornitsky asked how this has been done, to which Mr. Augusto explained that they are currently trying to get the trash removal company to come into their building and get the trash from their special refrigerated area.

M. Kornitsky moved to close the public hearing, B. Croft seconded, the Board unanimously approved and the public hearing was closed.

MOTION : by M. Kornitsky to approve the proposed structure as shown in the most recently filed iterations, with the condition that the frame, as shown on picture 2 and the top picture on page 7 not be displayed as such, but enclosed in canvas at all times, except when in uses and it is open to the weather and the canvas is retracted. There will be a review at the January 2018 meeting. The motion regarding signage from earlier in the evening as well including, the allowance of one blade sign, and one approved sign, and that the menu be black and white. The applicant must also comply with the Fire Departments regulations and timeframe from the prior special permit.

M. Kornitsky explained that it will be one motion. B. Croft asked what happens if he disagrees on one of the motions, M. Kornitsky stated he could break it out.

The first vote regarding the proposed signs: 4-1

The second vote was in regards to the enclosure: 5-0

A resident stood up and asked about the Board reviewing entertainment and time regulations. M. Kornitsky explained the entertainment permit was reviewed at the last meeting. The resident mentioned sound levels from the restaurant, R. Landen mentioned the permit regulated the entertainment, not the opening times for the restaurant.

## **PETITION 17-05**

## **20 PURITAN PARK**

Petition 17-05, 20 Puritan Park, is an application by Daniel and Andrea Franklin, who are seeing 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.

Both Andrea and Daniel Franklin were present. The applicants began by showing the Board new design plans for the project, which they explained to the Board, as well as stated the new designs take into account different characteristics of neighboring homes. The Franklins show a new entrance with square pillars and wood railings, and mentioned the windows will all be Andersen. The Franklins mentioned that the large window in the front of the home will be replaced. The Franklins mentioned that they had gone through the neighborhood and picked different design elements from homes and added them to the new design renderings. The Franklins then showed the Board the different photos of the different homes in their neighborhood. M. Kornitsky asked the Franklin's if they believe the homes they are showing to be part of their neighborhood, Ms. Franklin replied she does, as she can see them from her home.

Mr. Franklin then showed a real estate flyer for a home on Phillips Beach, which has a combination of brick and siding. Mr. Franklin clarified that he understood this home was not in his neighborhood, and explained there are other homes in the Town that have a mix of brick and siding. Ms. Franklin mentioned it is difficult to match brick, but there are other homes that have combos, and that's why they opted for the hardy board which they think is a nice fit.

The Franklins brought forward a letter of support from Michelle Bisconti.

M. Kornitsky asked for questions.

The Franklins mentioned that there will be no new curb-cuts, and the driveway will be extended 3 feet on both sides.

M. Kornitsky mentioned that he thinks the Franklins have taken the comments to heart, and believes the Franklins did a great job.

There were no further questions or comments.

M. Kornitsky moved to close the public hearing, the Board unanimously approved.

MOTION : by R. Landen to approve the special permits, to add a second story addition, as provided on the plans stamped, seconded by H. Roman, unanimously approved.

B. Croft asked if there is tree removal, M. Kornitsky stated it did not look like it by the driveway.

## **MEETING MINUTES**

M. Kornitsky moved to approve the meeting minutes from the previous meeting (which had been distributed previously), B. Croft seconded, the Board unanimously approved.

Meeting was then adjourned.

Andrew Levin  
Assistant Town Planner