

Town of Scituate

ZONING BOARD OF APPEALS

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Decision of the Scituate Zoning Board of Appeals on the application of RDP Realty, LLC of Hanover, Massachusetts for a Flood Plain Finding and Special Permit under Section 470.9 of the Town of Scituate Zoning Bylaw (the "Bylaw") to allow the construction of single family dwelling at the property known as and numbered 138 Stockbridge Road, Scituate Massachusetts.

The application was received, advertised and a public hearing was duly held on April 21, 2016 with the following members of the Zoning Board of Appeals hearing the application:

Sara J. Trezise, Chairman
John Hallin
Francis Lynch
Anthony J. Bucchere, Alternate

The property that is the subject matter of this application is located in the R-2 Residential District. A portion of the property lies in the Town of Scituate Flood Plain and Watershed Protection District; and lies within the Town of Scituate Water Resource Protection Zoning District. The property lies in Zone X as shown on FIRM MAP COMMUNITY PANEL #250282 0136 J, dated July 17, 2012. The property is currently serviced and will continue to be serviced by the town's public sewer system and the public water supply.

At the time of the application, title to the premises was held by RDP Realty, LLC by virtue of a deed recorded in the Plymouth County Registry of Deeds in Book 33372, Page 205. At the time of the public hearing title to the premises had been conveyed to Delryn Development, LLC and Diamond Development Realty Trust as Tenants in Common (hereinafter referred to as the "Applicant") by virtue of a deed recorded with the Plymouth County Registry of Deeds in Book 46816, Page 288.

The premises contain 59,564 square feet of land with 20,235 square feet of upland area, 125.49 feet of frontage along Stockbridge Road (a public way) and 125.49 feet of lot width. The R-2 Residential District requires 20,000 square feet lot area, 100 feet of frontage and 125 feet of lot width. The setback requirements in the R-2 Residential District require thirty (30) feet front setback, fifteen (15) feet side setbacks and rear setback of thirty (30) feet for a dwelling and attached accessory buildings. The proposed dwelling is shown on a plan prepared by Ross Engineering dated January 28, 2016 which was submitted with the Application. (The "Plan"). The proposed dwelling meets all current lot and setback requirements of the Bylaw.

The Subject Property is shown on the Flood Insurance Rate Maps, as prepared by FEMA, located in Zone X – Other Areas "Areas determined to be outside the 0.2% annual chance floodplain". The Subject Property is also shown to be partially in the Town of Scituate Flood Plain and Watershed Protection District 1972 Map (The "Scituate Map"), indicating a potential flood elevation of 40' above mean seal level. ("MSL") Given the property falling within the Flood Plain and Watershed Protection District, the Applicant has requested a Special Permit under Scituate Zoning Bylaw Section 470.9, requiring a Determination of Suitability, to construct a single family dwelling on property located in the Town of Scituate Flood Plain and Watershed Protection District.

At the time of the hearing the Applicant had already appeared before the Scituate Conservation Commission for a Notice of Intent for the Commission to review any potential impacts on the wetland resource areas from both the construction of the dwelling as well as storm water runoff. The Applicant made a copy of the Order of Conditions approving the project available to the Board at the Public Hearing.

Accompanying the Application was a May 31, 2006 Flood Plain & Watershed Protection District Special Permit issued by the Scituate Planning Board, who was the permitting authority in 2006 approving the construction of a single family dwelling at the Subject Property. With the passage of time, said permit has expired prompting the current Application before the Board of Appeals. Also submitted with the Application was a Memorandum of SITEC Civil and Environmental Engineering dated October 28, 2005 which stated that the 100 year flood plain in the area of the property falls below a level of 34' above mean sea level rather than the 40' elevations shown on the Scituate map. The proposed dwelling as shown on the Plan will be constructed between 37' and 39' MSL.

In addition to the SITEC report stating that the project is not subject to flooding Scituate Building Commissioner Neil Duggen stated at the hearing that he is familiar with the property and has no recollection of the property ever being subject to flooding. No one at the hearing presented any evidence to contradict this.

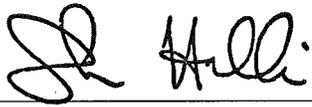
Based upon the evidence presented, the Board found that the provisions of Sections 940 and 950.3 of the Bylaw had been satisfied and that pursuant to Section 470.9 of the Bylaw that the Subject Property above Elevation 34' MSL is not subject to flooding and not unsuitable because of drainage conditions for the intended use of the construction of a single family dwelling.

For the foregoing reasons, the Board unanimously voted to GRANT the Applicant's request for a Determination of Suitability and a Special Permit under Section 470.9 of the Town of Scituate Bylaw to construct a single family dwelling as shown on the Plan at the property known and numbered 138 Stockbridge Road, Scituate, Massachusetts.

ZONING BOARD OF APPEALS



Sara J. Trezise



John Hallin



Francis Lynch

Filed with the Town Clerk and Planning Board on 5.24.16

This Special Permit will not become effective until such time as an attested copy of this decision has been filed with the Plymouth County Registry of Deeds after the appeal period of twenty (20) days.

Appeal of any decision of the Zoning Board of Appeals may be made pursuant to M.G.L. Chapter 40, Section 17, and shall be filed within twenty (20) days of the date of the filing of the decision with the Town Clerk.