

TOWN OF SCITUATE

Planning Board



600 Chief Justice Cushing Hwy.
Scituate, Massachusetts 02066
Telephone: (781) 545-8730
Fax: (781) 545-8704

Town of Scituate
Planning Board

Accessory Dwelling Special Permit – 33 Garden Road

2012 DEC 17 A 9 09
APPROVED - LINK

Decision: APPROVED with Conditions
Owner: Maria Marcelino
Applicant: John Townsend, Sandcastle Group
Date: December 12, 2012
Location: 33 Garden Road
Assessor's Map # 34-26-3
Plans: Unstamped Certified Plot Plan Showing Proposed Addition 33 Garden Road Scituate, MA dated 12/06/2012 prepared by A.S. Elliott Associates for Sandcastle Group; Proposed and Existing Floor Plans - 1, Proposed Perspective View Front Left - 2, Proposed Perspective View Front – 3, Proposed Perspective Rear Left – 4, Connecting Roof Front Overhead Perspective -5, Connecting Roof Front Perspective -6, Connecting Roof Front Left Perspective – 7, Connecting Roof Left Perspective – 8, Roof Valley Detail -9, Marcelino Addition 33 Garden Road Scituate, MA prepared by Sandcastle Group and revised dated 12/6/12 submitted with this application.

Members Hearing Special Permit Application: William Limbacher, Chairman; Daniel Monger, Richard Taylor, Robert Vogel and Eric Mercer.

Background: The property is located in the Residential R-3 Zoning District. The owner owns Lot 218 and Lot 219 which were previously joined in Land Court for a 10,000 sq. ft. lot. The existing dwelling located on Lot 219 known as 33 Garden Road is 1.5 stories and is serviced by an asphalt drive to the west of the house and a garage to the rear. The applicant previously filed an application for a freestanding Accessory Dwelling Special Permit, but withdrew the application on August 9, 2012. The proposed accessory dwelling will be an attached unit located to the northeast of the existing dwelling. It will be 746 sq. ft. It is proposed to be authorized as a second legal living unit on the same lot through approval of an accessory dwelling special permit by the Planning Board. The existing and proposed units are to be connected by a roofed connection of 117 sq. ft. The area of the accessory dwelling is less than 750 sq. ft. and parking for both units is shown on the plan. The front setback of the accessory dwelling meets the 30' requirement and the side and rear setbacks conform with the yard requirements for a primary structure. The existing dwelling has a front setback of 15.2 feet and the existing garage is within current side and rear setbacks. The applicant has signed an affidavit stating that she will occupy one of the dwelling units on the premises.

Procedural Summary: This request for a Special Permit was filed with the Town Clerk and the Planning Board on October 11, 2012. A Public Hearing before the Planning Board was duly advertised and notices sent to all abutters in accordance with MGL Chapter 40A. The hearing was opened November 8, 2012 and continued until November 20, 2012 where it was continued as only four members of the Board were present. On December 6, 2012, the hearing was closed and the Planning Board approved the Special Permit with conditions.

Hearing Summary: John Townsend of Sandcastle Group was present for the applicant. The owner, Maria Marcelino, was also present. Mr. Townsend indicated that Ms. Marcelino owns 33 Garden

Road. She has two 5,000 sq.ft. lots which were joined by land court for a total of a 10,000 sq. ft. lot. She desires to construct an attached accessory dwelling of 746 sq. ft. adjacent to the primary dwelling on the lot. There will be separate driveways for each dwelling. The accessory dwelling will be less than 750 sq. ft. as required by zoning. He indicated that Ms. Marcelino will occupy one of the units in accordance with the bylaw. He indicated that he listened to the concerns of the Board and neighborhood and made changes and believes the new application meets the criteria of Section 530.1 and 2 of the bylaw and all the dimensional requirements.

Discussion among the Board members and hearing attendees on 11/8/12 focused on the size of the accessory dwelling and breezeway connector, its relationship to the existing house on the site, that the accessory building should be designed so that the appearance of the building remains unchanged as much as possible, and whether the accessory dwelling was subordinate to the primary dwelling. Mr. Townsend expressed concern that his client was being punished because the accessory dwelling appears too large because of the small lot and existing house size. At the request of the applicant, the Board continued the hearing with the expectation that the applicant would present a new site plan with a redesigned accessory dwelling setback further on the lot, with a shortened breezeway and preferably with a continuous roof line of the accessory dwelling and breezeway, joined to the main residence. A hip roof at the left end of the accessory dwelling, adjacent to the driveway was also indicated by the Board to be preferred.

New drawings dated 12/6/12 were presented to the Board on the same date. The Board indicated that the revised drawings did all that the Board asked. They preferred the drawings with the roof aligned at the rear of the dwelling instead of the front as they were concerned about the valley the connector would make with the existing chimney. The front roof line will have a slight overhang at the connector.

The Board acknowledged that there will always be an issue of density when an accessory dwelling addition is nearly the same size as the primary dwelling, but they felt the applicant worked to reduce the impact to the neighborhood. The Board indicated the bylaw was discussed and approved at Town Meeting in 2010, but maybe needs another review. They acknowledged people would be unhappy, but the Board determines if it is subordinate. They indicated they could put conditions on occupancy in a decision.

Public Comment: The Planning Board received a comment letters from the Director of Public Health, Jennifer Sullivan, who has no concerns as the site is on sewer. The Water Division commented that they would like a separate new 8" water main to the accessory dwelling with a new 1" copper line and water meter. The Board received a comment from fourteen (14) abutters on 10/27/12 indicating they had similar concerns as with the prior withdrawn application. These were principally that an accessory dwelling that can be used as a rental property does not protect the character of the single-family neighborhood, and that it seems unlikely that the owner can't financially maintain her single-family home as she can afford to build a new Sand Castle modular home and hook up to sewer and water and pay additional taxes. They indicated that the owner has not maintained the home and rents it out.

Susan Elias of 40 Garden Road, Nancy Larkham of 38 Garden Road, Barbara McFadden of 35 Garden Road and Jeanne Brouillette of 38 Garden Road all spoke against the proposal on 11/8/12. They indicated that they thought this new application would resemble approved accessory dwellings on Fay Road which have shared walls instead of connectors. They also expressed concern that other homeowners in the single-family neighborhood could also add a breezeway and have an accessory unit for rent thereby changing the density of the neighborhood.

A comment letter dated 12/3/12 was received from Attorney Daniel J. MacKinnon, representing four (4) abutters who felt the project should be denied. They felt the application does not meet the bylaw as the accessory dwelling is not clearly a subordinate part of the single-family dwelling and does not protect the character of their single-family neighborhood. Attorney MacKinnon expressed the above position at the continued hearing on 12/6/12.

Mr. Alan Stewart of 38 Garden Road was concerned the purpose of the bylaw had not been met as the dwelling is not currently the owner's home thus the financial purpose of the bylaw had not been met. Barbara McFadden of 35 Garden Road expressed her concern that the accessory dwelling as proposed is really two buildings on one lot with the accessory dwelling being 75% of the primary so it was not subordinate. She indicated that she has driven around Scituate and looked at the accessory dwellings approved and none are connected by breezeways. She feels this will be a duplex due to the two drives. She was concerned that the unit would become a rental unit and many other people in the neighborhood could do the same thing.

Steve Bjorklund asked if the existing dwelling was not a pre-existing nonconforming structure, because it would need Zoning Board approval if it was more than 30% larger. The Board indicated that that issue was not pertinent to the Planning Board's discussion of an Accessory Dwelling Special Permit.

Mr. Timothy Dunn of 41 Garden Road indicated that the applicant is within the law. He indicated he would like to put a two bedroom rental unit in as well and is concerned about this setting a precedent for rental income. Susan Elias of 40 Garden Road and Nancy Larkham of 38 Garden Road, Mr. Stewart and Ms. McFadden all agreed that the proposed accessory dwelling was not subordinate and were concerned that the character of the single-family neighborhood would change.

Findings of fact: A motion was duly made and seconded to make the following Findings of Fact concerning the accessory dwelling at 33 Garden Road.

1. According to Town of Scituate Assessor's records, the property at 33 Garden Road is owned by Maria Marcelino.
2. On June 25, 2012, John Townsend of Sandcastle Homes applied for a special permit for an accessory dwelling with consent of the owner of the property. The site plan showed an accessory dwelling in a separate structure. This request was withdrawn on August 9, 2012.
3. On October 11, 2012, Sandcastle Homes filed an accessory dwelling special permit for an accessory dwelling attached to the existing single family dwelling at 33 Garden Road.
4. According to the Assessor's Records, the floor area of the primary dwelling is 864 sq. ft., or 1,076 sq. ft. with the enclosed porch. The floor area of the accessory dwelling as shown on the plan is 746 sq. ft. This is less than 750 sq. ft. and meets the requirements of 530.2F for accessory dwellings.
5. The site plan shows a driveway and a garage for the primary dwelling and a separate driveway for the accessory dwelling. This appears adequate to provide two parking spaces for the accessory dwelling and ample parking for the primary dwelling.
6. The property is located in the Residential R-3 zoning district. The setbacks for the accessory dwelling are 36.2' (front), 40' (rear), 20.9' (side) and appear to comply with the zoning bylaw. The structure is one story and will comply with the building height requirements for the district. The applicant will provide a stamped copy of the Certified Plot Plan.
7. The applicant has submitted a signed, notarized statement that she will live on the property.

8. The application meets the standards of Scituate Zoning Bylaw Section 530 for an Accessory Dwelling Special Permit.

Decision: A motion was duly made and seconded to approve the Accessory Dwelling Special Permit for 33 Garden Road with the following conditions:

1. The applicant shall meet all requirements of the Building Department, Board of Health, Department of Public Works, Fire Department, Water Department and other town agencies.
2. Except for any changes necessary to meet these conditions, any construction shall conform to the plans entitled Proposed and Existing Floor Plans -1, Proposed Perspective Front Left - 2, Proposed Perspective View Front -3, Proposed Perspective Rear Left -4 Marcelino Addition 33 Garden Road Scituate, MA prepared by Sandcastle Group and dated 12/6/12 submitted with this application. A revised certified plot plan must be submitted to the Planning Board prior to applying for a Building Permit for the accessory dwelling.
3. The property at 33 Garden Road shall contain a maximum of two dwelling units, the existing dwelling and the accessory dwelling as proposed. The footprint, number of bedrooms and/or square footage shall not be increased without prior approval of the Planning Board.
4. The owner of the property shall reside on the property as long as it contains an accessory dwelling unit.
5. The existing dwelling shall be required to be upgraded to conform to the perspective sketches submitted with the application within two years of the date of this approval.
6. The Planning Board will require an on-site inspection for conformance to the approved plans and these conditions prior to a Certificate of Occupancy being issued for the accessory dwelling.
7. No on-street parking shall be permitted.
8. A new 8" A/C main with 1" copper, 1" tap, 1" L/W are required for water service for the accessory dwelling as requested by the DPW Water Division.
9. This Special Permit shall be void if it is not recorded at the Registry of Deeds within 90 days of the date of filing with the Town Clerk. The owner shall provide proof of this recording to the Planning Board.
10. This Special Permit shall lapse within two years from the date of its issuance unless substantial use or construction has commenced prior to that time in accordance with MGL Chapter 40A, Section 9.
11. The Planning Board reserves the right to review compliance with this special permit at any time. This Special Permit shall terminate if the use is not in accordance with this decision and its conditions.
12. At the request of the Planning Board, an affidavit shall be provided that either the primary or accessory unit is owner occupied.
13. At each transfer of ownership of the property, a new affidavit that the owner resides on the property shall be provided to the Planning Board.

Vote:

Based on the Findings of Fact and the evidence and information provided by the applicant and obtained through the public hearings, the members of the Planning Board hearing this application voted unanimously to approve the Special Permit for an Accessory Dwelling at 33 Garden Road with the conditions noted above.

December 6, 2012
Date

SCITUATE PLANNING BOARD

Richard W. Taylor
[Signature]
Adrian B. [Signature]
[Signature]
William [Signature]

This decision was filed with the Town Clerk on December 17, 2012
date

Appeal of this special permit may be made pursuant to M.G.L. Chapter 40A, Section 17, and shall be filed in a court of competent jurisdiction. Proof of that filing shall be provided to the Town Clerk within twenty (20) days of the date of the filing of the decision with the Town Clerk.

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 expiration of the appeal period of twenty (20) days.

The Planning Board certifies that it has complied with all statutory requirements of MGL Chapter 40A, Sections 9 and 11, and will file copies of this decision with the Town Clerk. The Planning Board further certifies that it has taken into consideration all testimony rendered at the Public Hearing, the comments and suggestions of other boards which have reviewed and made comments on the plans, and all plans and documents submitted by the applicant.