



Amended Decision of the Scituate Zoning Board of Appeals (“Board”) in response to Land Court Order of Remand concerning clarification of Board’s decision on the application of South River Partners, LLC, 9 Stonebridge Lane, Milton, MA 02186 (“the Applicant”) for a Finding under Massachusetts General Law (“MGL”) 40A, Section 6 and a Special Permit under Scituate Zoning By-Law (“SZB”) Sections 820, 1020.2 and 1030<sup>1</sup>, which decision was filed with the Town Clerk on May 27, 2008.

In accordance with such Order of Remand, in compliance with MGL Chapter 40 A, section 11, the Board advertised and noticed a public hearing to be convened on August 20, 2009, and such public hearing was opened and closed on such date, with the following Members of the Board hearing the application:

Peter Morin, Chairman  
Brian B. Sullivan  
Sara J. Trezise

Plaintiff John A. Cronin was in attendance and Defendant South River Partners LLC was represented by Michael Solimando, its Manager and by Walter L. Sullivan, its attorney.

Mr. Morin summarized the Order of Remand as to the limited purpose of the convened meeting to consider and take action upon the proposed “Amendment of the Decision for Clarification Purposes”, as a consequence of the Joint Motion for Remand made by Mr. Cronin and South River Partners LLC. Mr. Morin acknowledged receipt by the Board prior to the meeting of a draft amended decision prepared by the attorney for South River and email communications between Mr. Cronin and said attorney concerning such draft amended decision. In the context of such email exchanges, Mr. Morin inquired for confirmation of the accuracy of his summary, from Mr. Cronin and South River’s attorney, which confirmation was expressed by each. Mr. Morin indicated that all such correspondence shall be copied and placed in the file.

Mr. Morin inquired for any questions or comments from the audience.

Mr. Sullivan requested that the minutes of the meeting reflect that members Sullivan and Trezise were recorded in the original decision as having voted thereupon and that Mr. Morin will be serving as the third member on the hearing panel, because the third voting member, Albert G. Bangert, is no longer a member of the Board. Mr. Morin indicated that he was present at all such hearings and that he has a distinct recollection of such hearings and the decision.

<sup>1</sup> (a) the razing of the existing structures upon the premises known as 8 Dartmouth Street, bounded by Central Avenue, Webster Street, Dartmouth Street and the South River (the “subject property”), and the reconstruction of five buildings containing fourteen residential town house units on the subject property; and

(b) the reconfiguration of the existing marine floats system at the subject property.

Mr. Morin inquired of the Board and Building Inspector Neil Duggan if there were any questions or comments concerning the proposed amended decision and Mr. Duggan inquired as to his role in confirming that the Village At South River Site Plan as amended June 8, 2009, would be in conformity with the Board decision as amended pursuant to the Order of Remand. The attorney for South River indicated, subject to the action of the Board, an intention to provide to Mr. Duggan and the Board, within the thirty (30) day period of time for filing the Board's amended decision with the Town Clerk, a certification of an engineer or registered land surveyor, indicating such Site Plan conformity, with specific reference to each of the proposed amendments approved by the Board and shown on said Site Plan. The Board affirmed that Mr. Duggan would be responsible for reviewing said plan for conformity with the decision as amended.

Upon motion duly made and seconded the meeting was closed.

Following discussion among the Board members, upon motion made by Brian Sullivan and seconded by Sara Trezise, it was unanimously voted to amend the Board's decision filed with the Town Clerk on May 27, 2008, as proposed in pages 2 and 3 of the said Order of remand,<sup>2</sup> by restating such decision as follows, so as to substitute by incorporation, said amendments, where required:

<sup>2</sup> Proposed amended paragraph 3, page 2:

"The Applicant proposes to raze all existing buildings on the property, reduce the size of the marine float system and cease operation of the boat storage yard. In their place, the Applicant proposes to construct five (5) buildings containing fourteen (14) town house units (to be used for residential purposes) and a reconfigured sixteen (16) slip marine float system. Said buildings shall conform to the following requirements of SZB including Section 570, adopted by Scituate Town Meeting on March 29, 2008, as said conformity is shown in the said Site Plan:

Building Setbacks- twenty-five (25) feet from the Dartmouth Street property line and eight (8) feet from the Webster Street property line and fifteen (15) feet for side property lines and twenty (20) feet the rear property line.

Building Height- No building shall exceed two and one half (2 1/2) stories or thirty five (35) feet in height measured to the ridge, whichever is lower, with the exception of any portion of a building which is within thirty five (35) feet of Central Avenue or Dartmouth Street, the roof of which building portion shall not exceed two and one half (2 1/2) stories or thirty (30) feet in height measured to the ridge, whichever is lower.

Floor Area Ratio- The gross floor area of the five building proposed to be constructed shall not exceed 0.425 of the 73,841 square feet of lot land area.

Ingress and egress to and from the completed project is limited to Central Avenue.

Parking and Landscaping, Driveways, Lighting, Plantings, Outdoor Parking Area Plantings and Screening shall be in accordance with SZB 570.6. B through F.

Design Standards shall be in accordance with SZB 570.7. A through G.

Proposed Amended SZB section 1030.2 b) finding in paragraph 5 on page 2:

"b) the reconstructed dwellings shall comply with, (as a condition of this decision), the Building Setbacks, Building Height, Floor Area Ratio and Ingress and egress and Parking and Landscaping and Design Standards, which are described in the amended paragraph 3, page 2, above.

DESCRIPTION OF THE PROPERTY: At the time of the application, title to the subject property was in the name of Applicant with a title reference of Plymouth County Registry of Deeds, Book 33448, Page 221 and Plymouth County Registry District of the Land Court Certificate of Title No. 109673.

The subject property is located in the GB District and lies within the Town of Scituate Flood Zone AE as shown on FIRM Map Panel #250282 0007 E revised October 16, 2003. It does not lie within the Town of Scituate Water Protection District. Currently on the subject property there are a 300-seat restaurant, a 20-slip marine float system, a boat launch, a boat storage yard and three accessory buildings. The property is serviced by the town's public water system and relies upon an on-site septic system. The Assessor's Field Card shows that the primary building on the property was constructed in 1905.

DETERMINATION ON ZONING BYLAW CONFORMITY: The Dimensional Regulations for lots and structures in the GB District are as follow-

- Lot area – not less than 10,000 square feet of upland;
- Lot frontage on a street or way – not less than 60 feet for nonresidential uses;
- Lot width at the building – not less than 100 feet;
- Setback from any street or way – not less than 30 feet;
- Side yard setback – not less than 8 feet;
- Rear yard depth – not less than 20 feet for dwellings or less than 8 feet for all other buildings.

The existing primary structure does not conform to current zoning requirements with respect to:

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Setback from any street or way - 12 feet from Dartmouth Street.

The allowed uses of property in the GB District are specified in SZB Sections 340 and 430. The use of the property as a boat storage yard is not permitted as of right in the GB District (SZB 430.1).

Based upon evidence and testimony presented at the hearing the Board determined that the two nonconformities outlined above were in existence prior to the adoption of the relevant Zoning Bylaw by the Town of Scituate. Therefore, the Board finds that the property enjoys pre-existing, non-conforming status and the protections afforded by MGL 40A, Section 6.

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Proposed Amendment of Condition 1 of page 3:

"Condition 1- There shall be no change to the residential use or to the buildings or marine float system as proposed at the hearing without an amendment of the Board's decision, in conformity with the SZB Section 1030.2. b) Finding on page 2 hereof, except as provided for in footnote 1 hereof.

1. Except as otherwise provided in Condition 1 of said Decision (page 3), further amendments may be made to said Site Plan to accommodate the requirements of the Conservation Commission and Board of Health and DEP and shall become effective upon the filing of evidence of such requirement and said amended Site Plan with the Board.

PROPOSED PROJECT: The Board reviewed the following documents provided by the Applicants –

1. Site plan drawn by Merrill Associates, 427 Columbia Road, Hanover, MA, dated November 13, 2007 and revised March 4, 2008 (6 sheets)
2. Architectural plan prepared by Axiom Architects, 2048 Washington Street, Hanover, MA, dated March 6, 2008 (7 sheets)
3. Pictorial representation of the project's profile as viewed from the South River prepared by Axiom Architects dated February 13, 2008
4. Plan for proposed float system revisions prepared by Tetra Tech Rizzo, 10 Forbes Road, Braintree, MA dated February 4, 2008 (6 sheets.)

The Applicant proposes to raze all existing buildings on the property, reduce the size of the marine float system and cease operation of the boat storage yard. In their place, the Applicant proposes to construct five (5) buildings containing fourteen (14) town house units (to be used for residential purposes) and a reconfigured sixteen (16) slip marine float system. Said buildings shall conform to the following requirements of SZB including Section 570, adopted by Scituate Town Meeting on March 29, 2008, as said conformity is shown in the said Site Plan:

Building Setbacks- twenty-five (25) feet from the Dartmouth Street property line and eight (8) feet from the Webster Street property line and fifteen (15) feet for side property lines and twenty (20) feet the rear property line.

Building Height- No building shall exceed two and one half (2 1/2) stories or thirty five (35) feet in height measured to the ridge, whichever is lower, with the exception of any portion of a building which is within thirty five (35) feet of Central Avenue or Dartmouth Street, the roof of which building portion shall not exceed two and one half (2 1/2) stories or thirty (30) feet in height measured to the ridge, whichever is lower.

Floor Area Ratio- The gross floor area of the five building proposed to be constructed shall not exceed 0.425 of the 73,841 square feet of lot land area.

Ingress and egress to and from the completed project is limited to Central Avenue.

Parking and Landscaping, Driveways, Lighting, Plantings, Outdoor Parking Area Plantings and Screening shall be in accordance with SZB 570.6. B through F.

Design Standards shall be in accordance with SZB 570.7. A through G.

Residents, business owners and abutters at the hearing provided input to the Board and spoke in favor of the proposed project.

Pursuant to Section 1030.2 of the Scituate Zoning Bylaw, the Board finds that a) the lot is appropriate for the proposed multi-family dwelling and marine float system uses, b) the reconstructed dwellings shall comply with, (as a condition of this decision), the Building Setbacks, Building Height, Floor Area Ratio and Ingress and egress and Parking and Landscaping and Design Standards, which are described in the amended paragraph 3, page 2, above.

c) the uses will not create any undue nuisance or hazard to vehicles or pedestrians, d) the Town's Board of Health and the Building Commissioner will ensure that appropriate facilities are provided to assure the proper operation of the multi-family dwellings, e) the proposed use of dwellings will not have a significant impact on any public or private water supply, and f) the subject property is not located within the Water Resource Protection District. In addition, the Board finds that the uses reflects the nature and purpose of the use prevailing when the relevant bylaw took effect, that there is no difference in the quality or character, as well as the degree of use, and the proposed use is not different in kind in its effect on the neighborhood.

**THEREFORE**, the Board unanimously voted to GRANT the Applicant a Special Permit under SZB Sections 820, 1020.2 and 1030 and a Finding under MGL Chapter 40A Section 6 that the proposal to raze all of the buildings located at the subject property known as 8 Dartmouth Street, Scituate, Massachusetts and replace them 14 town house style residential units in 5 buildings and a 16-slip marine float system as presented by the Applicant is not substantially more detrimental or injurious to persons, property or improvements in the vicinity. Accordingly, the Board determined that the Applicant may construct said dwellings and marina, provided that they are constructed as proposed at the hearing and completed within two years following the razing of the buildings with the following conditions-

1. There shall be no change to the residential use or to the buildings or marine float system as proposed at the hearing without an amendment of the Board's decision, in conformity with the SZB Section 1030.2. b) Finding on page 2 hereof, except as provided for in footnote 3 hereof.

3. Except as otherwise provided in Condition 1 of said Decision (page 3), further amendments may be made to said Site Plan to accommodate the requirements of the Conservation Commission and Board of Health and DEP and shall become effective upon the filing of evidence of such requirement and said amended Site Plan with the Board.

2. The Applicant shall make the following improvements to the existing public boat ramp

- a. ramp side slope stabilization (rip rap or other)
- b. maintenance dredging and landscaping
- c. perpetual public access passage to and from said launch and ramp and to and from and over a stairway to the pier for passive waterfront viewing and access to the Applicant's strip of land bounded by the South River all as more particularly described in the Applicant's Chapter 91 Waterways License Application (a copy of which is on file with the Board).

3. The Applicant shall provide one off-site affordable housing unit, priced and deed-restricted as provided for by SZB Section 560.7 B and C. Said affordable housing unit shall be ready for occupancy prior to the issuance of the occupancy permit for the first market rate unit.

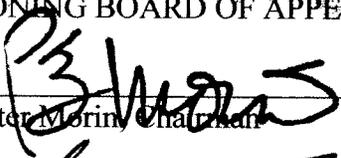
4. The Applicant shall remove the existing stockade fence along the rear lot line and shall eliminate and not replace the seasonal boat storage operation.

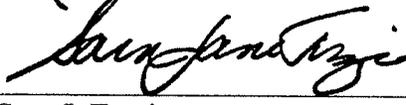
5. The Applicant shall site the buildings as proposed at the hearing so as to enhance the South River views from the adjacent streets.

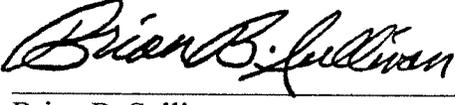
6. The Applicant shall provide in addition to the 28 garage parking spaces, 39 exterior parking spaces and shall maintain such exterior parking spaces and driveways as unpaved in accordance with the requirements of the Conservation Commission.

7. The Applicant shall require that weekly trash collection be provided as part of the condominium common area maintenance service agreement so as to eliminate the need for an on-site trash dumpster.

ZONING BOARD OF APPEALS

  
Peter Morin, Chairman

  
Sara J. Trezise

  
Brian B. Sullivan

Filed with the Town Clerk on September 15, 2009

This Amended 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.

Any such appeal of this Amended Special Permit shall be subject to Remand 4 of said Land Court Order of Remand and shall 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.