

Scituate Zoning Board of Appeals
Meeting Minutes
May 19, 2016

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PRESENT: Sara Trezise, Chairperson, Frank Lynch, Ed Tibbetts, John Hallin and Anthony Bucchere.

Also Present: Neil Duggan, Building Commissioner and Zoning Enforcement Officer.

The Scituate Zoning Board of Appeals held a public hearing on May 19, 2016 at the Scituate Town Hall located at 600 Chief Justice Cushing Highway, Scituate. The meeting was called to order at 7:00 P.M.

First Application: Stockbridge Properties, LLC of 41 Cavanaugh Road, Scituate, MA requests a finding under 810.3 of the Scituate Zoning Bylaw and/or a Finding/ Special Permit under M.G.L. Chapter 40A, Section 6 to allow an office addition on an existing pre-existing, nonconforming building and use at **108 Stockbridge Road, Scituate, MA (Assessor's Map 54, Block 2, Parcel 25 & 26).**

Representing the Applicant: Jeff Hassett, Civil Engineer, Morse Engineering.

Also Present: Andrew Spath, owner.

Mr. Hassett explained the property is located in the R2 residential zone and is comprised of two parcels totaling nine acres. A single family home is on the front of the property and a contractor's yard is in the rear. The garage, built in 1950, is used by the owner. The proposed office addition to the rear of the garage would enable the owner to monitor activity on the property, and would not be visible to the properties located on the other side. A paved access way would provide entrance.

Mr. Duggan asked the Applicant to explain the nature of use for the addition.

Mr. Spath stated it would be an office for his excavating contractor business, Site Pro.

Mr. Duggan explained the Special Permit granted in August of 1991 was very restrictive as to what was allowed there.

Ms. Trezise explained the Applicant must request a modification to the existing Special Permit to allow Site Pro to operate.

Mr. Tibbetts further explained the ZBA does not want to limit or extend the Applicant's rights under the existing Special Permit. The existing Special Permit can only limit the uses, not the business entities. A modification to the existing Special Permit protects the interests of all parties involved.

Ms. Trezise opened the meeting to public comment.

Chris Parks of 122 Stockbridge Road can see dump trucks, etc. from the back of his house. Six days of every week people are working on the site from 6:30am- 10pm.

Marissa Voelger of 130 Stockbridge Road asked if abutters would be notified and whether other tenants would be present at the ZBA meeting when the applicant comes forth with a new application.

Ms. Trezise confirmed abutters would be notified.

Mike Clark of 103 Stockbridge Road stated he has reviewed the existing Special Permit and noted its great detail. Additional comments and questions may follow the modification to the existing Special Permit.

The Applicant requested a continuance to the July 21, 2016 meeting.

Mr. Hallin moved to allow the Applicant to continue the hearing to the July 21, 2016 meeting, seconded by Mr. Lynch. All in favor, unanimous.

Second Application: George Egan of 131 Glades Road, Scituate, MA requests a M.G.L. Chapter 40A, Section 6 Finding/ Special Permit by adding a second floor to the existing dwelling staying within the existing footprint. The property is located at **131 Glades Road, Scituate, MA (Assessor's Map 5, Block 3, Parcel 49).**

Representing the Applicant: Sara Foley, Designer.

Ms. Foley stated the proposed plan will create dormers, but the ridge height of the roof will not change. A roof deck would extend 6'.

Mr. Duggan explained to the Board the application for a small addition of 5.5' x 21' on the rear of the house. The abutting house was destroyed by fire and cannot be reconstructed.

Mr. Tibbetts clarified the proposed plan shows a bump out on the rear of the second floor of about 5 feet thereby creating more headroom and increased enclosed space on the second floor.

Mr. Lynch noted the existing nonconformities are the rear setback, but the site plan submitted with the application does not indicate setbacks. The Board requests a plan showing the proposed structure on the site plan, existing and proposed setbacks as well as the existing and proposed square footage with the percentage of increase.

Ms. Foley requested to continue the hearing to the June 16, 2016 meeting.

Mr. Tibbetts moved to allow the Applicant to continue the hearing to the June 16, 2016 meeting, seconded by Mr. Hallin. All in favor, unanimous.

Third Application: : (Continued from April 21, 2016) Jonathan Aprea of 23 Shipyard Drive, Hingham, MA requests a M.G.L. Chapter 40A, Section 6 Finding/ Special Permit on behalf of John M. Creedon to raze a single story non-conforming garage and construct a two story garage in a larger footprint keeping the same non-conforming setbacks. The property is located at **4 Grasshopper Lane, Scituate, MA (Assessor's Map 7, Block 7, Parcel 2)**.

The Applicant requested to continue the hearing until the June 16, 2016 meeting per a letter dated May 18, 2016 (see file).

Mr. Tibbetts moved to allow the Applicant to continue the hearing to the June 16, 2016 meeting, seconded by Mr. Hallin. All in favor, unanimous.

Fourth Application: (Continued from April 21, 2016) Kenton L. Bongarzone of 17 Gates Circle, Scituate, MA requests a Special Permit/ Finding in accordance with Scituate Zoning Bylaw Sections 810, 820 and M. G. L. Chapter 40A, Section 6 to permit the extension, alteration and/ or intensification of a pre-existing non-conforming use and structure at **5 Williamsburg Lane, Scituate, MA (Assessor's Map 37, Block 2, Parcel 4A)**.

Representing the Applicant: Adam Brodsky, Esq.

Attorney Brodsky requested to withdraw the application without prejudice.

Ms. Trezise explained her reluctance to allow the withdrawal without prejudice.

Attorney Brodsky explained the first application was different in that the Applicant was seeking a Variance. The present application for a Special Permit was filed under different circumstances by an engineer.

After discussion and further consideration the Board assented to the Applicant's request.

Mr. Lynch moved to allow the Applicant to withdraw the application without prejudice. Motion seconded by Mr. Hallin, all in favor, unanimous.

Fifth Application: (Continued from April 21, 2016) David Comeau of 6619 S. Dixie Hwy-Unit 376, Miami, FL requests a Flood Plain Special Permit under section 470.6F and a Finding/Special Permit or Variance under M.G.L. Chapter 40A, Section 6 and 10 to raze and reconstruct non-conforming single family dwelling adding more than 20% to existing gross floor plan located at **169 Jericho Road, Scituate, MA (Assessor's Map 46, Block 14, Parcel 10)**.

Representing the Applicant: Bill Ohrenberger, Esq. and Paul Mirabito, Registered Engineer.

Attorney Ohrenberger explained the application to the Board and stated in 1946 there was a land swap with the town. Presently, the town's guard rail and asphalt encroaches on the property. The Applicant has offered and agreed to removing the guard rail and asphalt as well as restriping the parking lot. The existing structure was constructed in 1915 and is nonconforming with respect to lot size, front, rear and left side setback. The accessory structure has nonconforming side

setbacks. Further, Section 200 of the Scituate Zoning Bylaws defines a single family dwelling as a building containing one dwelling unit and allowed accessory uses. Attorney Ohrenberger argued the garage is an allowed accessory use and is subject to the same setback requirements as the single family dwelling. By extension the garage is a preexisting nonconforming accessory structure.

Mr. Bucchere stated the rear setback of the dwelling and the garage are currently conforming. The side setback is nonconforming. The ZBA cannot allow an applicant to create a new nonconformity. Further, the Applicant cannot seek relief from the ZBA for conforming rear setbacks

Mr. Tibbetts corroborated Mr. Bucchere's statement adding the rear setbacks are conforming for the house and the accessory structure.

Mr. Duggan explained the Deadrick et. al. v. ZBA- Chatham, et. al case in which the Court ruled the creation of a new nonconformity requires a Variance.

After further discussion between the Board and Attorney Ohrenberger the meeting was open for public comment.

Rosemary O'Neil of 148 Jericho Road expressed great concern with regards to the setbacks and nonconformities as well as the proposed size of the structure. Additional comments and questions with reference to surveying the lot and land title were stated.

Steve Bjorkland of 38 Ladd's Way supported the Board's position on the application.

Attorney Ohrenberger requested to withdraw the application without prejudice.

Mr. Lynch moved to allow the Applicant to withdraw the application without prejudice at the request of the Applicant. Motion seconded by Mr. Hallin, all in favor, unanimous.

Request for Modification of Comprehensive Permit- Stockbridge Woods: Stockbridge II Realty Trust requests a modification to the Comprehensive Permit. The primary changes are to allow (1) the transfer of the Comprehensive Permit to the new buyer by allowing the permit to be sold to Scituate Stockbridge Woods, LLC (2) make some non-material changes to the provisions of the agreement to reflect more typical construction conditions and requirements for the Stockbridge Woods project located off Stockbridge Road, Scituate, MA.

The Applicant requested to continue the hearing until the June 16, 2016 meeting per a letter dated May 18, 2016 (see file).

Mr. Duggan explained the Board's need for further information prior to the hearing.

The application was open for public comment.

Mike Clark of 103 Stockbridge Road questioned who the Applicant was. Further comments and concerns would be reserved for the following hearing.

Mr. Lynch moved to allow the Applicant to continue the hearing to the June 16, 2016 meeting, seconded by Mr. Hallin. All in favor, unanimous.

Request for Modification of Comprehensive Permit- Walden Woods LLC: Walden Woods LLC requests a modification to the Comprehensive Permit for the development known as Walden Woods to allow for a modification to the width of the sidewalk from Tilden Rd. to Hazel Ave., a revision to the Cape Cod berm and the addition of nine (9) additional parking spaces for visitors within the green area between units #25 and #26. The project is located off Stenbeck Place, Scituate, MA.

Representing the Applicant: Anthony Esposito, Registered Engineer.

Mr. Esposito reviewed the history following the November 2015 request for a modification and would like to renew the Applicants request for a 4' sidewalk following denial for the same at the November hearing noting 4' is ADA compliant. In addition to the modification for the sidewalk width the Applicant proposes the addition of nine gravel based parking spaces located in what is presently proposed to be an open grassy area in response to a parking shortage expressed by several residents. A gravel base would not negatively impact drainage. However, the Applicant has been made aware of other residents who expressed opposition to this proposal. Bearing this in mind, the Applicant defers to the residents and would abide by the wishes of the majority. Mr. Esposito requested the Board vote on each request for modification separately.

Mr. Lynch moved to approve the request for sidewalk width modification to the Comprehensive Special Permit. Motion seconded by Mr. Tibbetts, all in favor, unanimous.

After reading a letter submitted by the Manning's of 12 Rachel's Way stating their opposition to the proposed parking area, Ms. Trezise opened the hearing public comment.

Barry Smith of 14 Rachel's Way wanted to clarify the 4' sidewalk complies with ADA regulations and that there would be no structural changes to the sidewalk. Mr. Smith also stated his strong opposition to the proposed parking area. A parking area would eliminate the open grassy area which was represented as such when Mr. Smith purchased his unit. He respectfully asked the Board to deny this modification.

Mike Clark of 103 Stockbridge Road asked for clarification of the regulations and wanted assurance the proposed modification complies.

Ms. Trezise confirmed.

Donna Griffin of 27 Rachel's Way inquired what the parking area would be used for and why Tilden Road does not have sidewalks.

Ms. Trezise stated sidewalk installation along Tilden Road is currently in progress.

Bob Stravero of 18 Rachel's Way was told the area in question would be an open grassy area-not a parking lot. He is strongly opposed to the proposed parking area.

Kevin Griffin of 27 Rachel's Way agrees with the Manning's letter of opposition.

Elizabeth Smith of 14 Rachel's Way concurs with all who spoke.

The Board discussed whether or not the proposed modification represents a substantial change to the Comprehensive Permit.

Mr. Duggan explained the area in question was not addressed by the ZBA as it was the intended area for the septic mound. The Town later provided for sewer lines through the development thereby leaving the space open.

Mr. Esposito requested to withdraw the request for the gravel parking area.

Mr. Tibbetts moved to allow the Applicant to withdraw the request for nine gravel parking spaces, a modification to the Comprehensive Special Permit, without prejudice. Motion seconded by Mr. Bucchere, all in favor, unanimous.

Minutes presented for approval.

Mr. Tibbetts moved to approve March 17, 2016 minutes. Motion seconded by Mr. Hallin, all in favor, unanimous (Mr. Lynch not voting).

Mr. Bucchere moved to approve April 21, 2016 minutes. Motion seconded by Mr. Hallin, all in favor, unanimous.

Meeting Adjourned at 9:45.

Respectfully Submitted,



Anne M. Kelly