

**Scituate Zoning Board of Appeals
Meeting Minutes
May 21, 2015**

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PRESENT: Sara Trezise, Chairman, Ed Tibbetts, Frank Lynch and John Hallin
ALSO PRESENT: Bob Vogel, Local Building Inspector.

The Scituate Zoning Board of Appeals held a public hearing on May 21, 2015 at the Scituate Town Hall located at 600 Chief Justice Cushing Highway, Scituate. The meeting was called to order at 7:00 P.M.

Continued from February 19, 2015: Request for the Zoning Board of Appeals to review changes with regard to the Comprehensive Permit issued on January 16, 2003 to Stockbridge II Realty Trust. The project is located at 90 Stockbridge Road (Assessors Map 054, block 2, parcel 30)

Representing Stockbridge Realty Trust: Attorney James Toomey, Scituate Town Council

Mr. Toomey explained the plans dated 3.25.2015 had been revised and reviewed by John Chessia. Basins have been moved and drainage has been reconfigured. Placement of utilities remains to be determined and will be completed with construction details. Mr. Toomey proposed a motion for the Board to consider that would grant approval subject to detailed plans reviewed and approved by the Building Commissioner prior to the issuance of a Building Permit.

Mr. Tibbetts moved to endorse the applicants plan currently submitted and dated May 5, 2015 as complying with applicable storm water requirements and requirements of the comprehensive permit provided additional revisions showing full construction detail shall be made and approved by the Building Commissioner prior to the issuance of a Building Permit. Motion amended to reflect the date of March 25, 2015, seconded by Mr. Hallin, all in favor, unanimous.

Request for Status Update: Re. South River Partners, LLC and Scituate Affordable Housing Trust - Construction at 163 Stockbridge Road.

Representing South River Partners, LLC: Michael Solimando.

Mr. Solimando explained to the Board that the new dwelling is framed and likely ready for occupancy in approximately sixty (60) days. He then inquired about eligibility requirements for prospective buyers and the status of the Affordable Housing Trust lottery.

Mr. Hallin, who is an exiting member of the Affordable Housing Committee, stated the list is not current. He would need to check dates and, if necessary, do a new lottery.

The Board expressed their appreciation for the update. No questions or comments were raised by the public. No further action was necessary.

Kenton L. Bongarzone of 17 Gates Circle, Scituate requests a variance in accordance with M.G.L. Ch. 40A Section 10 from Section 520.4 of the Scituate Zoning Bylaw requiring a 150 ft. "no disturb" buffer zone from a tributary to allow construction of a single family dwelling at 5 Williamsburg Lane in Scituate, MA.

Representing applicant: Adam Brodsky, Esq., and Mr. Greg Morse, Professional Engineer, of Morse Engineering.

Documents presented: Copy of site plan, letter from Adam Brodsky dated May 8, 2015

Ms. Trezise gave Mr. Tibbetts the opportunity to address accusations of a conflict of interest expressed in a petition against the variance request created by Dana Duggan of 18 Williamsburg Lane and signed by neighbors.

Mr. Tibbetts explained he has been a ZBA Board member on and off for the past 15 years. He is a full time teacher who holds a Real Estate license. This has enabled him to consult with his wife who is an active real estate broker. He would recuse himself from the hearing in the event Ms. Trezise deemed it the most appropriate course of action.

Ms. Trezise stated Mr. Tibbetts should not and need not recuse himself.

Mr. Brodsky stated he felt there was no conflict of interest, as did Mrs. Bongarzone and therefore neither felt it necessary Mr. Tibbetts recuse himself.

Ms. Trezise read the Zoning Bylaw 520.4 for the purpose of clarifying the applicants request for a variance as well as the conditions under which a variance can be granted.

Mr. Brodsky again presented the board with a background and history of the property which was created in 1955. In 1970 the owners granted the town an easement for a drainage pipe. This man made drainage channel emptied in to the Old Oaken Bucket Reservoir. At a town meeting in 1987 a bylaw was adopted and the Water Resource Protection District was created. As part of this bylaw a non-disturb 150' buffer zone was included. In 2011 wetlands were indicated on the town mapping. Mr. Bongarzone hired Mr. Brad Holmes, a Professional Wetland Specialist who identified an intermittent stream on the property. An Order of Conditions was obtained from the Conservation Commission in 2012. In an unrelated project also during 2012, Massachusetts Department of Environmental Protection reviewed the drainage channel and determined it was not an intermittent stream, but rather a tributary to a public water supply. This included the ditch up to the headwall. Mr. Brodsky noted the lot would be non-buildable without a variance granted, as almost the entire lot lies within the 150' non-disturb buffer zone. He also discussed three criteria considered when a variance is requested: circumstances related to the shape and/or typography of the property, no substantial detriment to the public good should the relief requested be granted and a substantial hardship to the applicant should the relief requested be denied.

Mr. Morse presented the plot plan with an explanation of the septic system proposed for the site explaining to the board the septic system is a Fast system which removes nitrogen from the effluent better than other septic technologies.

Mr. Brodsky explained the property is unbuildable without a variance being granted. It is zoned as a residential lot. Without a variance the lot is prevented from use in a conforming way.

Mr. Morse further explained a proposed 50' vegetative buffer from the tributary as well as the FAST nitrogen reducing septic system. He described four "fingers" of the R-2 zone with Zone A overlay. Within the first area, fifteen (15) lots have been developed and built on. In the second "finger" six of the seven lots have been built on. Within the third area which holds thirty six (36) lots, four lots are not buildable. The remaining thirty two (32) have been built on. The last of the four "fingers" holds nineteen (19) lots, one of which is unbuildable.

Mr. Vogel spoke about the lot and the hearing before the Planning Board in the past regarding White Ash Farm. He felt that building on this lot is in direct conflict with the 150' Non-Disturbance buffer zone and the lot does not meet the conditions under which a variance could be granted.

Ms. Trezise opened the meeting to the public for commentary.

Mr. John Clarkson, Scituate Water Resource Committee, encouraged the Board to not be distracted by the effluent septic system. At issue is the "150' Non-Disturbance Buffer Zone".

Mr. Lance Van Lenten, 150 Old Oaken Bucket Road, stated the water is largely a natural stream. Massachusetts Department of Environmental Protection confirmed the existence of a tributary. It has been a part of Mass. G.I.S. data since that time.

Laura Harbottle, Scituate Town Planner, encouraged the Board to protect the water supply. Water Resource Protection District overlay shows where tributaries are within "Zone A". They run throughout R1 and R2 districts. The important criterion to consider is the 150' Non-Disturbance Buffer zone.

Samantha Woods, Executive Director of the North and South Watershed Association, told the Board our water resources are strained. Ms. Woods asked the Board to deny the request for a variance.

The Board had a lengthy discussion with regards to the WRPD and bylaw 520.4 (Non-Disturbance Buffer Zone). Ms. Trezise stated she found eleven (11) lots in the Williamsburg neighborhood which lie within the 150' non-disturbance buffer zone. This property is not unique except in its proximity to the tributary. A bylaw that prevents building on a lot does not necessarily create or qualify as a hardship. The proposed development would violate every aspect of the bylaw.

Mr. Brodsky explained the reason they sought relief from the Board of Health first was to assure all that this development could take place without harm to the tributary's water quality. This is relevant inasmuch as the primary concerns expressed are related to the environment.

Ms. Trezise stated the issue on this lot is singular. The bylaw prohibits construction of any permanent structure within 150' of a tributary.

Mr. Brodsky respectfully disagreed. He explained the lot is unique by topography in that it is the bottom of a bowl. It was the drainage pattern created by this which contributed to the creation of the tributary.

Mr. Lynch inquired what about the topography has prevented building here. Topography may have contributed to the presence of the tributary, but it is the tributary, not typography, that prevents building.

Mr. Brodsky responded and stated he believes there is a nexus between typography and the tributary that creates a unique condition affecting this lot.

Ms. Trezise thanked the applicant and those they have hired to represent them. She noted the thorough presentation and expressed the Boards appreciation for the time and effort involved. Ms. Trezise reiterated the purpose of the Water Resource Protection District bylaw which was voted in to the Town bylaws at Town meeting in 1987. She then stated the applicant was seeking relief from every aspect of the bylaw. Furthermore, the bylaw clearly prohibits any structure from being built within 150' of a tributary.

Mr. Tibbetts suggested the intention of the bylaw as being written with a "macro" view as opposed to a "micro" perspective. He encouraged the other Board members to give consideration to this point of view.

Applicant requested a withdrawal of the application without prejudice.

Mr. Tibbetts moves to allow the applicant to withdraw the application without prejudice, seconded by Mr. Lynch, all in favor, unanimous.

Minutes from April 16, 2015 Zoning Board of Appeals meeting presented for approval.

Mr. Tibbetts moved to approve minutes as presented, seconded by Mr. Lynch, all in favor, unanimous.

Motion to adjourn by Mr. Tibbetts, seconded by Mr. Hallin, all in favor, unanimous.

Meeting adjourned at 9:30pm.

Respectfully Submitted,

Anne Kelly